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THE

WAR OF THE REBELLION:

A COMPILATION OF THE

OFFICIAL RECORDS

OF THE

UNION AND CONFEDERATE ARMIES.

PREPARED, UNDER THE DIRECTION OF THE SECRETARY OF WAR,

BY

Lieut. Col. ROBERT N. SCOTT, Third U. S. Artillery,

AND

PUBLISHED PURSUANT TO ACT OF CONGRESS APPROVED JUNE 16, 1880.

SERIES I—VOLUME XII—IN THREE PARTS.

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PREFACE.

An act of Congress approved July 31, 1886, provided, in connection with the publication of the Records of the War of the Rebellion, that—

The evidence taken by the court-martial on the trial of Fitz John Porter, and the arguments made before the court by counsel for the prosecution and defense, together with the report thereon by Judge Holt to President Lincoln, and any reply thereto filed with the President before approval of sentence, shall be printed in connection with matter already printed concerning the proceedings of said court-martial.

The matter referred to as already printed appears in Series I, Vol. XII, Part II, of the published records. The entire record of the court-martial, with the review thereon of Judge-Advocate-General Holt, is therefore published as a supplement to said Volume XII, and is so paged that in a new edition of the Records it can be incorporated in Part II of that volume.

ROBERT N. SCOTT,
Lieut. Col. Third U. S. Artillery.

WAR DEPARTMENT, *October* 2, 1886.

Approved.

WM. C. ENDICOTT,
Secretary of War.

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THE FITZ JOHN PORTER COURT-MARTIAL.

PROCEEDINGS OF A GENERAL COURT-MARTIAL WHICH CONVENED AT THE CITY OF WASHINGTON, IN THE DISTRICT OF COLUMBIA, BY VIRTUE OF THE FOLLOWING SPECIAL ORDER:

SPECIAL ORDERS, No. 362.

HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, *Washington, November* 25, 1862.

* * * * * * *

III. The military commission ordered to assemble on the 20th instant, by Special Orders, No. 350, November 17, 1862, from Headquarters of the Army, is hereby dissolved, and a general court-martial is hereby appointed, to meet in this city on the 27th instant, or as soon thereafter as practicable, for the trial of Maj. Gen. Fitz John Porter, U. S. Volunteers.

Detail for the court.

Maj. Gen. D. Hunter, U. S. Volunteers.
Maj. Gen. E. A. Hitchcock, U. S. Volunteers.
Brig. Gen. Rufus King, U. S. Volunteers.
Brig. Gen. B. M. Prentiss, U. S. Volunteers.
Brig. Gen. James B. Ricketts, U. S. Volunteers.
Brig. Gen. Silas Casey, U. S. Volunteers.
Brig. Gen. James A. Garfield, U. S. Volunteers.
Brig. Gen. N. B. Buford, U. S. Volunteers.
Bvt. Brig. Gen. W. W. Morris, U. S. Army.
Col. J. Holt, Judge-Advocate-General U. S. Army, judge-advocate and recorder of the court.

No other officers than those named can be assembled without manifest injury to the service.

By command of Major-General Halleck:

E. D. TOWNSEND,
Assistant Adjutant-General.

WASHINGTON, D. C., *November* 27, 1862.

The court met at 11 a. m., pursuant to the foregoing order.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Col. J. Holt, Judge-Advocate-General. Absent, Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A.

Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Bvt. Brig. Gen. W. W. Morris, U. S. Army.

The accused was also present.

The judge-advocate read the foregoing order, and stated that, owing to the absence of several members of the court, he would present nothing for its consideration to-day. Whereupon the court adjourned until 11 a. m. to-morrow.

LIBRARY OF CONGRESS

WASHINGTON, D. C., *November* 28, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Col. J. Holt, Judge-Advocate-General. Absent, Brig. Gen. Rufus King, U. S. Volunteers; Bvt. Brig. Gen. W. W. Morris, U. S. Army.

The accused was also present.

The minutes of the preceding session were read and approved.

The judge-advocate read the following special order:

SPECIAL ORDERS, No. 364. HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, *Washington, November* 26, 1862.

* * * * * * *

V. Brig. Gen. J. P. Slough, U. S. Volunteers, is hereby detailed a member of the general court-martial ordered to assemble on the 27th instant, by Special Orders, No. 362, November 25, 1862, from the Headquarters of the Army, or as soon thereafter as practicable, for the trial of Maj. Gen. Fitz John Porter, U. S. Volunteers; and Bvt. Brig. Gen. W. W. Morris, U. S. Army, is hereby relieved from the operation of said order.

By command of Major-General Halleck:

E. D. TOWNSEND,
Assistant Adjutant-General.

The judge-advocate stated that he was not ready to present anything for the consideration of the court, and probably would not be until Monday next; whereupon the court adjourned until 11 a. m. on Monday next.

—

WASHINGTON, D. C., *December* 1, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; Col. J. Holt, Judge-Advocate-General. Absent, Brig. Gen. Rufus King, U. S. Volunteers.

The accused was present.

The minutes of the last session were read and approved.

The judge-advocate stated to the court that a copy of the charges

had been furnished to Major-General Porter only this morning, and suggested that the court adjourn, in order to afford General Porter an opportunity of considering those charges before being called upon to plead thereto.

By direction of the president of the court, inquiry was made of General Porter whether he desired time to examine the charges against him.

General Porter replied that he had just received a copy of the charges against him, and in order to examine them and to decide upon what witnesses he should want to be called, he would desire to have until Thursday morning next, at which time he hoped to be able to hand in a list of witnesses.

General King being still absent, the judge-advocate was requested to inform the authority by which this court has been ordered of that fact, and to respectfully ask whether any further order is required to enable the court to proceed to business.

The room was cleared, and the court proceeded to deliberate with closed doors.

After some time the doors were reopened; whereupon the court adjourned to 11 a. m. to-morrow.

—

WASHINGTON, D. C., *December* 2, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; Col. J. Holt, Judge-Advocate-General. Absent, Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers.

The accused was present.

The minutes of the last session were read and approved.

The judge-advocate stated to the court that, in pursuance of the instructions of the court yesterday, he had consulted the General-in-Chief, by whom this court-martial was ordered, and his reply was that he did not consider any further order necessary to enable this court to proceed to business, but that General King was expected by every arrival, and, if he did not reach here very soon, his place would be supplied. It seemed to be the desire of the General-in-Chief that the court should be full.

The president of the court stated that he had received a letter from General King, who wrote that he had seen in the newspapers that he was upon this court; but as he had received no official notification to that effect, he did not feel himself authorized to leave his command.

The judge-advocate said that he had been assured, at the Adjutant-General's Office, that notice had been immediately sent to General King of his appointment. General King would also be telegraphed to-day.

Whereupon the court adjourned to 11 a. m. to-morrow.

—

WASHINGTON, D. C., *December* 3, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig.

Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; Col. J. Holt, Judge-Advocate-General.

The accused was also present.

The minutes of the preceding session were read and approved.

The court then proceeded to the trial of Maj. Gen. Fitz John Porter, U. S. Volunteers, who was called before the court, and, having heard the order appointing the court read, was asked if he had any objection to any member named in the detail.

The accused replied that he had no objection. The court was then duly sworn by the judge-advocate, and the judge-advocate was duly sworn by the president of the court, in the presence of the accused.

At the request of the accused, permission was granted for his counsel, Hon. Reverdy Johnson and Charles Eames, esq., to be present during the trial.

The accused submitted the following application in writing:

WASHINGTON CITY, *December* 2, 1862.

Maj. Gen. D. HUNTER,
President of General Court-Martial, Washington, D. C.:

GENERAL: I respectfully ask of the court, through you, that its proceedings may be open, not merely to the public, but also to the press.

Accusations of a most serious character are laid against me. They extend over a short period, embracing important operations, and are connected with whatever of success or disaster has attended some of those operations. The impression has gone forth that I am in a degree responsible for the latter, and I am charged with preventing success. My character has been assailed through the public press with charges of "doubtful loyalty," and my name stained with such epithets as "traitor" or "semi-traitor." If the testimony elicited by this court sustains the allegations, I alone am the sufferer by the publicity. If my innocence be proved, after the impartial investigation which I am confident this honorable body will require, let my countrymen be convinced that the confidence reposed in me was not misplaced, and that by this investigation the Government designs to do justice to our country and to those engaged in fighting her battles.

I am, very respectfully, your obedient servant,

F. J. PORTER,
Major-General.

DECEMBER 3.

P. S.—I see to-day published in the morning papers the report of the General-in-Chief, in which he comments on some of the matter for investigation before this court. The presentation of that matter at the present, while my trial is going on, is apt to prejudice the public mind, and I ask, therefore, that this application be granted. I the more urge this, as the General-in-Chief refrains, he says, from commenting on matter of complaint against General Buell because his trial is progressing.

F. J. PORTER,
Major-General.

The room was cleared, and the court proceeded to deliberate with closed doors.

After some time the doors were reopened; whereupon the judge-advocate stated the decision of the court to be as follows:

The court, having considered the application of General Porter, decide that it will sit with open doors, in accordance with the custom of the service.

The charges and specifications were then read, as follows:

Charges and specifications exhibited against Maj. Gen. Fitz John Porter, of the volunteers of the U. S. Army, by B. S. Roberts, brigadier-general of U. S. Volunteers, and inspector-general of Major-General Pope's Army of Virginia.

CHARGE 1ST.—Violation of the Ninth Article of War.

Specification 1st.—In this, that the said Maj. Gen. Fitz John Porter, of the volunteers of the United States, having received a lawful order, on or about the 27th August,

1862, while at or near Warrenton Junction, in Virginia, from Maj. Gen. John Pope, his superior and commanding officer, in the following figures and letters, to wit:

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, August 27, 1862—6.30 p. m.

Maj. Gen. F. J. PORTER, *Warrenton Junction:*

GENERAL: The major-general commanding directs that you start at 1 o'clock to-night, and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about 300 killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send word to him to push forward immediately; also send word to Banks to hurry forward with all speed, to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealeton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

By command of Major-General Pope:

GEO. D. RUGGLES,
Colonel and Chief of Staff.

P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately. If Banks is not at the junction, instruct Colonel Clary to run the train back to this side of Cedar Run, and post a regiment and section of artillery with it.

By command of Major-General Pope:

GEO. D. RUGGLES,
Colonel and Chief of Staff—

Did then and there disobey the said order, being at the time in the face of the enemy. This at or near Warrenton, in the State of Virginia, on or about the 28th of August, 1862.

Specification 2d.—In this, that the said Maj. Gen. Fitz John Porter, being in front of the enemy, at Manassas, Va., on or about the morning of August 29, 1862, did receive from Maj. Gen. John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to wit:

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29, 1862.

Generals MCDOWELL and PORTER:

You will please move forward with your joint commands toward Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that, as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to join the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view: that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or the next day. My own headquarters will for the present be with Heintzelman's corps, or at this place.

JOHN POPE,
Major-General, Commanding—

Which order the said Major-General Porter did then and there disobey. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.

Specification 3d.—In this, that the said Maj. Gen. Fitz John Porter, having been in front of the enemy during the battle of Manassas, on Friday, the 29th of August, 1862, did on that day receive from Maj. Gen. John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to wit:

HEADQUARTERS IN THE FIELD,
August 29, 1862—4.30 p. m.

Major-General PORTER:

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General, Commanding—

Which said order the said Major-General Porter did then and there disobey, and did fail to push forward his forces into action either on the enemy's flank or rear, and in all other respects did fail to obey said order. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.

Specification 4th.—In that the said Maj. Gen. Fitz John Porter, being at or near Manassas Junction, on the night of the 29th August, 1862, did receive from Maj. Gen. John Pope, his superior and commanding officer, a lawful order, in figures and words as follows, to wit:

HEADQUARTERS ARMY OF VIRGINIA,
In the Field, near Bull Run, August 29, 1862—8.50 p. m.

Maj. Gen. F. J. PORTER:

GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

JOHN POPE,
Major-General, Commanding—

And the said Maj. Gen. Fitz John Porter did then and there disobey the said order, and did permit one of the brigades of his command to march to Centreville—out of the way of the field of battle—and there to remain during the entire day of Saturday, the 30th of August. This at or near Manassas Station, in the State of Virginia, on the 29th and 30th days of August, 1862.

Specification 5th.—In this, that the said Maj. Gen. Fitz John Porter, being at or near Manassas Station, in the State of Virginia, on the night of the 29th August, 1862, and having received from his superior commanding officer, Maj. Gen. John Pope, the lawful order set forth in specification fourth to this charge, did then and there disobey the same, and did permit one other brigade attached to his command—being the brigade commanded by Brig. Gen. A. S. Piatt—to march to Centreville, and did thereby greatly delay the arrival of the said General Piatt's brigade on the field of battle of Manassas, on Saturday, the 30th August, 1862. This at or near Manassas, in the State of Virginia, on or about the 29th day of August, 1862.

B. S. ROBERTS,
Brigadier-General of Volunteers and Inspector-General of Pope's Army.

CHARGE 2D.—Violation of the Fifty-second Article of War.

Specification 1st.—In this, that the said Maj. Gen. Fitz John Porter, during the battle of Manassas, on Friday, the 29th August, 1862, and while within sight of the field and in full hearing of its artillery, did receive from Maj. Gen. John Pope, his superior and commanding officer, a lawful order to attack the enemy, in the following figures and letters, to wit:

HEADQUARTERS IN THE FIELD,
August 29, 1862—4.30 p. m.

Major-General PORTER:

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping

your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General, Commanding—

Which said order the said Major-General Porter did then and there shamefully disobey, and did retreat from advancing forces of the enemy without any attempt to engage them, or to aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack he was thus ordered to make to secure a decisive victory, and to capture the enemy's army, a result which must have followed from said flank attack, had it been made by the said General Porter in compliance with the said order, which he so shamefully disobeyed. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.

Specification 2d.—In this, that the said Maj. Gen. Fitz John Porter, being with his army corps, on Friday, the 29th August, 1862, between Manassas Station and the field of a battle then pending between the forces of the United States and those of the rebels, and within sound of the guns and in the presence of the enemy, and knowing that a severe action of great consequence was being fought, and that the aid of his corps was greatly needed, did fail all day to bring it on to the field, and did shamefully fall back and retreat from the advance of the enemy, without any attempt to give them battle, and without knowing the forces from which he shamefully retreated. This near Manassas Station, in the State of Virginia, on the 29th of August, 1862.

Specification 3d.—In that the said Maj. Gen. Fitz John Porter, being with his army corps near the field of battle of Manassas, on the 29th August, 1862, while a severe action was being fought by the troops of Major-General Pope's command, and being in the belief that the troops of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away and fall back with his army to the Manassas Junction, and leave to the disasters of a presumed defeat the said army, and did fail, by any attempt, to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the safety of the capital of the country. This at or near Manassas Station, in the State of Virginia, on the 29th day of August, 1862.

Specification 4th.—In this, that the said Maj. Gen. Fitz John Porter, on the field of battle of Manassas, on Saturday, the 30th August, 1862, having received a lawful order from his superior officer and commanding general, Maj. Gen. John Pope, to engage the enemy's lines and to carry a position near their center, and to take an annoying battery there posted, did proceed in the execution of that order with unnecessary slowness, and, by delays, give the enemy opportunities to watch and know his movements and to prepare to meet his attack; and did finally so feebly fall upon the enemy's lines as to make little or no impression on the same, and did fall back and draw away his forces unnecessarily, and without making any of the great personal efforts to rally his troops or to keep their lines, or to inspire his troops to meet the sacrifices and to make the resistance demanded by the importance of his position, and the momentous consequences and disasters of a retreat at so critical a juncture of the day.

B. S. ROBERTS,
Brigadier-General Volunteers and Inspector-General Pope's Army.

After the reading of the foregoing charges and specifications was concluded, the judge-advocate said: The last specification (specification 4th, under charge 2d) is withdrawn, as it is my purpose to offer no proof under it.

The accused asked if that specification was to be entered upon the record, the judge-advocate having notified the court of its withdrawal.

The JUDGE-ADVOCATE. It is necessarily a part of the record, because a copy was made out and served upon General Porter before I had consulted with the witnesses and decided that I should offer no testimony under it. I cannot now mutilate the record; but I enter upon the record a formal withdrawal, and that is an end to that specification. There is, therefore, no plea necessary to it.

The accused then submitted the following paper as the basis of objection to the court proceeding further in the case:

WASHINGTON, D. C., *December* 3, 1862.

There is a question of form, possibly involving important matter of law, to which I now, upon my own reflections and the advice of my counsel, deem it proper respectfully to ask the consideration of the court.

The charges and specifications furnished to me are signed by B. S. Roberts, brigadier-general of volunteers and inspector-general of Pope's army. The order convening a military commission in my case recited that the subject-matter of its investigation was charges preferred against me by Maj. Gen. John Pope.

I desire to be informed whether, under these circumstances, the charges before this court, signed, as above stated, by an officer of General Pope's staff, whose official character as such appears as part of his signature, be or be not, in the judgment of the court, in contemplation of law, charges preferred by Major-General Pope, or by his order, so as to make the presentation of them his act.

Should the court hold this to be the legal fact, then, as the court is aware, the order convening this court is not legal, in view of the provision of the statute of 1830, which requires the court, in such a case, to be convened by the President of the United States, and not, as this court is convened, by order of the General-in-Chief.

The determination of this question now may prevent embarrassment and delay hereafter, and in that view solely I now present it, and not with the slightest purpose of taking any exception to any member of the court.

F. J. PORTER,
Major-General.

The JUDGE-ADVOCATE. The accused refers to the order appointing a military commission, in which it was recited that it was to try charges preferred by Major-General Pope. In point of fact, no charges ever were preferred by him. That commission was dissolved, and this general court-martial appointed, by virtue of this order:

SPECIAL ORDERS, No. 362.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, November 25, 1862.

* * * * * * *

The military commission ordered to assemble on the 20th instant, by Special Orders, No. 350, November 17, 1862, from Headquarters of the Army, is hereby dissolved, and a general court-martial is hereby appointed, to meet in this city on the 27th instant, or as soon thereafter as practicable, for the trial of Maj. Gen. Fitz John Porter, U. S. Volunteers.

There is no reference to the charges, or by whom they are preferred, in the order appointing this court.

The ACCUSED. The question raised by the paper just read by the accused is that, perhaps, in point of legal effect these charges, although signed by Brigadier-General Roberts, as inspector-general of Pope's army, are to be considered as charges preferred by General Pope himself. We desire to have that question disposed of.

The JUDGE-ADVOCATE. There is no reference in the order appointing this court to General Pope at all. I wish to state distinctly that Major-General Pope is not the prosecutor in this case, nor has he preferred these charges, nor do I present them as being preferred by him.

The room was then cleared, and the court proceeded to deliberate with closed doors.

After some time the doors were reopened.

The judge-advocate stated the decision of the court to be as follows:

The court determine that they will overrule the objection; that the court is properly organized, and that the accused shall plead to the charges and specifications.

Whereupon the accused entered the following plea:
To *Specification 1st*, CHARGE 1ST, "Not guilty."
To *Specification 2d*, CHARGE 1ST, "Not guilty."
To *Specification 3d*, CHARGE 1ST, "Not guilty."
To *Specification 4th*, CHARGE 1ST, "Not guilty."
To *Specification 5th*, CHARGE 1ST, "Not guilty."
And to the CHARGE, "Not guilty."
To *Specification 1st*, CHARGE 2D, "Not guilty."
To *Specification 2d*, CHARGE 2D, "Not guilty."
To *Specification 3d*, CHARGE 2D, "Not guilty."
And to the CHARGE, "Not guilty."
The judge-advocate stated that there were no witnesses now in attendance.
Whereupon the court adjourned to 11 a. m. to-morrow.

—

WASHINGTON, D. C., *December* 4, 1862.

The court met pursuant to adjournment.
Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; Col. J. Holt, Judge-Advocate-General.
The accused, with his counsel, was also present.
The minutes of the preceding session were read and approved.
The judge-advocate laid before the court for its use during the trial a map, marked "Government Exhibit A," being a map entitled "Map of Northeastern Virginia and vicinity of Washington, compiled at Topographical Engineers' Office, at division headquarters of General Irvin McDowell, Arlington, January 1, 1862, from published and manuscript maps corrected by recent surveys and reconnaissances."
The court then proceeded to the examination of witnesses.

Maj. Gen. JOHN POPE was called by the Government, sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state to the court what position you occupy in the military service of the United States?

Answer. I hold a commission as brigadier-general in the Regular Army and as major-general of volunteers.

Question. What was your position and command and what the field of your operations on the 27th of August last?

Answer. Do you mean my military position as commander?

Question. Yes, sir.

Answer. I commanded the Army of Virginia, which, as originally constituted, consisted of the army corps of McDowell, Banks, and Frémont. These, by the 27th of August, had been re-enforced by a portion of General Burnside's command, by General Heintzelman's corps, and, on the morning of the 27th, by a part of General Porter's corps. A portion of my command, also, consisted of the troops under General Sturgis, which had begun to come up to Warrenton Junction. I was myself, on the morning of the 27th, at Warrenton Junction. The field of operations of the army at that time covered the region of country between the Warrenton Turnpike and the Orange and Alexandria Railroad.

Question. At what time on the 27th did you leave Warrenton Junction, and in what direction did you march?

Answer. I left Warrenton Junction before midday, I think, though the precise hour I do not remember, and moved east along the railroad, following the movements of Hooker's division, toward Manassas Junction.

Question. At what time did General Porter arrive with his command, or the portion of his command of which you speak, at Warrenton Junction?

Answer. I think between the hours of 7 and 10 o'clock in the morning of the 27th of August.

Question. How many troops had he then with him?

Answer. He reported to me that he had brought up Sykes' division of regulars, numbering 4,500 men.

Question. Did you see his troops; and, if so, what was their condition?

Answer. I only saw them at a distance, as they passed along; not sufficiently near to ascertain anything about that.

Question. Did you, or not, after you left Warrenton Junction and proceeded along the road east, issue to Major-General Porter an order in reference to the movements of his troops; and, if so, what was the character of that order?

Answer. I issued an order to General Porter late in the afternoon of the 27th, directing him to move with his command at 1 o'clock that night to the position I then occupied at Kettle Run; that if General Morell with his other division was not up to Warrenton Junction when he received that order, to send back and hurry him up, and to come forward himself with the troops which he had. That is my remembrance of the order. I gave him some further directions concerning General Banks' movement, the substance of which I remember very well, but not the precise words.

Question. Will you look at this order, which is dated "Headquarters Army of Virginia, August 27, 1862, 6.30 p. m., Bristoe Station, to Maj. Gen. F. J. Porter, Warrenton Junction," and state whether or not that is the order to which you refer in your answer.

Answer. That is the order I issued.

The accused admitted that the order shown to witness is the order, a copy of which is set forth in the first specification of first charge.

Question. Will you explain to the court the reasons for the urgency of the order, as indicated by the following words of the order: "It is necessary on all accounts that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place?"

Answer. General Hooker's division had had a severe fight along the railroad, commencing some 4 miles west of Bristoe Station, and had succeeded in driving the division of General Ewell back along the road, but without putting it to rout; so that at dark Ewell's forces still confronted Hooker's division along the banks of a small stream at Bristoe Station. Just at dark, Hooker sent me word, and General Heintzelman also reported to me, that he (Hooker) was almost entirely out of ammunition, having but five rounds to a man left, and that, if any action took place in the morning, he would, in consequence, be without the means of making any considerable defense. As it was known that Jackson, with his own and the division of A. P. Hill, was at or in the vicinity of Manassas Junction, and near enough to advance to the support of Ewell, it was altogether probable that, if he should learn the weakness of our forces there, he would unite, and make an attack in the morning. It was for that purpose that I was so anxious that General Porter's corps should be present by daylight, the earliest moment at which it was likely the attack would be made.

Question. What distance would General Porter have had to march to have obeyed your order?

Answer. About 9 miles.

Question. And within what time; from 1 o'clock until when?

Answer. He would have had until daylight. I do not remember exactly what time daylight was; perhaps 4 o'clock, perhaps a little earlier. I directed him to move at 1 o'clock, in order to give his command as much time to remain in their beds at night as possible, supposing that it would occupy him perhaps three hours to get upon the ground. I had expected him there certainly by 4 o'clock.

Question. You had just passed over the road along which he was required by this order to march; will you state its condition?

Answer. The road was in good condition everywhere. At most places along the road it was a double road, on each side of the railroad track. I am not sure it was a double road all the way; a part of the way I know it was.

Question. Did General Porter obey that order?

Answer. He did not.

Question. At what time on the 28th did he arrive at Bristoe Station, the point indicated in your order?

Answer. As the head of his column came to Bristoe Station, I took out my watch; it was 20 minutes past 10 o'clock in the morning.

Question. Did he at that time, or at any time before his arrival, explain to you the reason why he did not obey the order?

Answer. He wrote me a note, which I received, I think, in the morning of the 28th; very early in the morning, perhaps a little before daylight. I am not quite sure about the time. The note I have mislaid. I can give the substance of it. I remember the reasons given by General Porter. If it is necessary to state them, I can do so.

The accused asked if the witness had looked for the note.

The WITNESS. I looked for it, but have not been able to find it.

The JUDGE-ADVOCATE. I will not press the question.

The ACCUSED. I do not object to it. The witness says he has looked for the note and cannot find it. I only want to know when and where he has searched for it.

By the JUDGE-ADVOCATE:

Question. What was the character of the night; was it starlight?

Answer. Yes, sir; as I remember, it was a clear night; that is my recollection.

Question. If there were any obstacles in the way of such a march as your order contemplated, either growing out of the night or the character of the road, will you please state them?

Answer. There was no difficulty in marching, so far as the night was concerned. I have several times made marches, with a larger force than General Porter had, during the night. There was some obstruction on the road in a wagon train that was stretched along the road, marching toward the Manassas Junction, in rear of Hooker's division; not sufficient, in my judgment, to have delayed for any considerable length of time the passage of artillery. But even had the roads been entirely blocked up, the railroad track was clear, and along that track had passed the larger portion of General Hooker's infantry. There was no obstruction to the advance of infantry.

Question. Whatever obstacles, in point of fact, may have existed to the execution of this order, I ask you, as a military man, was it, or not, the duty of General Porter, receiving this command from you as his superior officer, to have made efforts, and earnest efforts, to obey?

Answer. Undoubtedly; it was his duty.

Question. Will you state what orders, if any, you gave to General Porter, on the 29th of August, in reference to the movements of himself and his men, and the grounds upon which those orders were based?

Answer. In answer to that question, it will, perhaps, be necessary for me to state, at least partially, the condition of things on the afternoon of the 28th, and during the

night of the 28th and 29th of August, for the reason that the information from the front, upon which the dispositions of the army were made, varied at different periods of the day and night, and it was not until toward daylight in the morning of the 29th that I became thoroughly satisfied of the position of the enemy, and of the necessary movements of troops to be made in consequence. The orders that I gave to General Porter on the 29th of August, as I remember them, were four. One of them was dated in the night, I think; I do not remember the time. That order, I think, required him, in consequence of information we had received of the concentration of the enemy's forces beyond Centreville, to move upon Centreville. But about daylight in the morning, I sent General Porter an order to take his own army corps, which was then at Manassas Junction, and which by my order had been re-enforced by the brigade of General Piatt—which had come up there in the command of General Sturgis and King's division of McDowell's corps, which had withdrawn to Manassas Junction, or to that vicinity, during the night of the 28th—and move forward in the direction of Gainesville. An hour and a half later I received a note from General McDowell, whom I had not been able to find until that hour in the morning, requesting that King's division of his corps be not turned over to General Porter, but that he be allowed to conduct it himself. I then sent a joint order to Generals Porter and McDowell, directed to them at Manassas Junction, specifying in detail the movement that I wished to be made by the troops under their command—the withdrawal of King's division, of McDowell's corps, which, during the greater part of the night, I had understood to be on the Warrenton turnpike, and west of the troops under Jackson. Their withdrawal to Manassas Junction, I feared, had left open Jackson's retreat in the direction of Thoroughfare Gap, to which point the main portion of the army of Lee was then tending to re-enforce him. I did not desire to pursue Jackson beyond the town of Gainesville, as we could not have done so on account of the want of supplies—rations for the men and forage for the horses. My order to Generals Porter and McDowell is, therefore, worded that they shall pursue the route to Gainesville until they effect a junction with the forces that are marching upon Gainesville from Centreville—the forces under Heintzelman, Sigel, and Reno; and that when that junction was formed (as I expected it would have been very near to Gainesville), the whole command should halt, it being, as I stated before, not feasible with my command in the condition it was in, on account of supplies, to pursue Jackson's forces farther. During the whole morning the forces under Sigel and Heintzelman had kept up a skirmishing with the rear of Jackson's forces, they retiring in the direction of Gainesville. They were brought to a stand at the little town of Groveton, about 8 miles, I think, from Centreville, and perhaps 5 or 6 miles from Gainesville. When I rode on to the field of battle, which was about noon (having been delayed at Centreville), I found that the troops had been sharply engaged, and were still confronting each other. General Sigel reported to me that he needed re-enforcements in the front; that his line was weak, and that his troops required to be withdrawn from the action. I told him (as I did General Heintzelman, who was present on the ground) that I only wished them to maintain their positions, as the corps of McDowell and Porter were then on the march from Manassas Junction toward the enemy's right flank, and ought, in a very short time, to be in such position as to fall upon that portion of his line. I desired them, therefore, only to maintain the positions they occupied. We waited for the arrival of Generals McDowell and Porter. At 4 o'clock, or some little after that time (perhaps at half-past 4 in the afternoon), finding that neither McDowell nor Porter had made their appearance on the field, I sent an order to General Porter, informing him, generally, of the condition of things on the field, and stating to him that I desired him to push forward and attack the enemy in flank, and, if possible, in rear, without any delay. This order was sent to General Porter about half-past 4 in the afternoon. Finding that General Porter did not comply with this order, and receiving a dispatch which he sent to Generals McDowell and King, stating to them that he was about to fall back, or was falling back, to Manassas Junction, and that he did so because he saw clouds of dust, showing that, in his judgment, the enemy was advancing on the road he was occupying, and stating that it appeared to him, from the fire of the battle that he had been listening to, that our forces were retreating and the enemy advancing, and he had determined to fall back to Manassas Junction, and recommended Generals McDowell and King to send back their trains also—receiving this note, purporting to be from General Porter to Generals McDowell and King, I sent an order to General Porter, directing him, immediately upon the receipt of the order, to march his whole command to the field of battle, and to report to me in person for orders, stating to him that I expected him to comply strictly with that order. I put it in such form (perhaps not entirely courteous) because I had understood General Porter, upon two several occasions, to have disobeyed the orders that I had sent him. These are all the orders that I issued on that day and night to General Porter. I will state, in addition to what I have already said, that the first of these orders to which I have referred, being subsequently superseded, is not perhaps referred to here. I will also state that the corps of Sigel, Heintzelman, and Reno were formed in line of battle

across the Warrenton turnpike, facing to the west, and near the little town of Groveton, or at it, almost at the point where the road from Manassas Junction to Sudley Springs—the Sudley Springs road, I think it is called—crosses Warrenton turnpike a little in advance of that road.

The judge-advocate stated that the first order referred to by the witness in his answer to the last interrogatory is not referred to in the specifications, being superseded by a subsequent order.

Question. Excluding from view the first order given on the morning of the 29th of August, and which directed General Porter to fall back upon Centreville, and which, you say, was superseded by a subsequent order, are or are not the other three orders which you have enumerated in your last answer, given to General Porter on that day, the same which are set forth in the second, third, and fourth specifications of the first charge preferred against him? [Handing witness the charges and specifications.]

Answer. [After examining them.] They are the same orders.

Question. Do you mean to say that the order set forth in the second specification, addressed to Generals McDowell and Porter, is the one which superseded that first order?

Answer. No, sir. There was one sent to General Porter previously to that time giving nearly the same directions, and which is referred to in that joint order as having been given an hour and a half before. I repeated that second order in detail, because I was not sure that General Porter had received the order referred to there as having been sent to him an hour and a half before.

Question. At what hour in the morning was this order issued, addressed to Generals McDowell and Porter, and set forth in the second specification of the first charge?

Answer. I do not remember distinctly. I think it was somewhere between 8 and 9 o'clock in the morning.

Question. Was there an engagement then pending?

Answer. Fighting was then going on along the turnpike that led from Centreville to Warrenton—fighting was going on quite sharply.

Question. Did the march of General Porter's command, as indicated in that order, lead him toward that battle?

Answer. Yes, sir; it led him toward the flank of the enemy.

Question. What forces had he under his command that morning when that order was issued?

Answer. He had, or should have had, at Manassas Junction, the whole of his own corps, which, from his report to me at Warrenton Junction, I understood to be between 8,500 and 9,000 men. I had added to his command the troops forming the brigade commanded by General Piatt. They were to belong to the division of General Sturgis, and I think they numbered about 3,500 men. Their exact strength I do not know. That was the impression I got from General Sturgis.

Question. Was that his entire command?

Answer. That was his entire command. I understood him to have had from 12,000 to 12,500 men at Manassas Junction.

Question. What was the distance between Manassas Junction and the scene of this engagement of which you speak?

Answer. Between 5 and 6 miles, I think, though I had not been myself over the road.

Question. Do you know the character of the road? Had you passed over it?

Answer. I had not passed over it.

Question. Did General Porter obey the order addressed to him and General McDowell?

Answer. I do not know whether he obeyed it; he did not obey it fully; how far he obeyed it, I am not able to say; he certainly did not obey the order fully.

Question. If he had obeyed it, would it not have brought him up with the enemy before half-past 4 in the evening?

Answer. Yes, sir.

Question. On your arriving on the battle-field, where was he reported to you to be?

Answer. I arrived on the battle-field at 12 o'clock—about noon. At 4½ o'clock nobody on the field knew where General Porter was at all.

Question. Did, or did not, General Porter obey the second order to which you refer, issued at 4.30 p. m. on the 29th of August, directing him to engage the enemy in flank, and, if possible, in rear?

Answer. He did not, so far as my knowledge of the fact goes.

Question. You have no knowledge of his having made any attack then?

Answer. I should have known it if he had attacked.

Question. Will you state to the court, and describe the condition of the battle-field at that hour, and the importance of his obedience of that order to the success of your troops?

Answer. Late in the afternoon of the 29th, perhaps toward half-past 5 or 6 o'clock—about the time that I hoped that General Porter would be in his position, and be assaulting the enemy on the flank, and when General McDowell had himself arrived with his corps on the field of battle—I directed an attack to be made on the left of the enemy's line, which was handsomely done by Heintzelman's corps and Reno's corps. The enemy was driven back in all directions, and left a large part of the ground with his dead and wounded upon it in our possession. Had General Porter fallen upon the flank of the enemy, as it was hoped, at any time up to 8 o'clock that night, it is my firm conviction that we should have destroyed the army of Jackson.

Question. You have stated that General McDowell obeyed that order, so far as to appear upon the battle-field with his command?

Answer. Yes, sir. He arrived on the battle-field, I think, about 5 o'clock, and immediately pushed forward his corps to the front; the division of General King having a very sharp engagement with the enemy along the Warrenton turnpike, in advance of the position that we had occupied during the day.

Question. To reach the battle-field, had, or had not, General McDowell as great a distance to march as General Porter?

Answer. Yes, sir; I should think fully as great.

Question. I believe you have stated the distance from Manassas Junction to the battle-field as about 4 or 5 miles?

Answer. Five or six miles; I am not quite sure; that is my impression.

Question. Is, or is not, that about the distance which the command of General Porter would have had to have marched to have obeyed your order?

Answer. It would have had to march less than that. You refer, I suppose, to the order I issued about half-past 4 in the afternoon?

Question. Yes, sir.

Answer. General Porter was reported to me, by the aide-de-camp who delivered him that order, to be two miles or more from Manassas Junction, in the direction of the field of battle.

Question. In point of fact, did, or did not, General McDowell, in obeying that order, pass General Porter and his command on the way?

Answer. I so understood. General McDowell can tell that better than I can myself.

Question. I will ask you now in regard to the last order, that which purports to be dated on the 29th of August, at 8.50 p. m., and is set forth in the fourth specification of the first charge. I will ask you if General Porter obeyed that order or not.

Answer. General Porter appeared himself on the field the next morning with a portion of his command. Two brigades, however, were not present with him, but were reported by aides-de-camp to me as being at Centreville.

Question. Do you, or not, know at what point those brigades were separated from his command?

Answer. I do not.

Question. What brigades were they?

Answer. One was General Griffin's brigade; the other was General Piatt's brigade. I would say, however, of the latter brigade, that when they reached Centreville, and found that there was a battle going on in the advance, they marched forward to the field, and made their appearance on the ground, and took part in the action late in the afternoon of the 30th of August; that is, the brigade of General Piatt. They did so without orders to that effect from anybody.

Question. Do you know what became of General Griffin's brigade, or where it was during the battle of the 30th of August?

Answer. Of my own knowledge I do not know, except what was reported to me by my aide-de-camp from Centreville, that the brigade was there.

Question. It took no part in the action?

Answer. No, sir.

Question. Will you state what effect, if any, was produced, or was liable to be produced, on the fortunes of that battle by the absence of that force?

Answer. A very great effect. I do not know the strength of General Griffin's brigade; but a brigade of four regiments and a battery of artillery, as I understand it. That was utterly withdrawn from the field; took no part in the action. General Piatt's command got up very late; too late to do anything, except, indeed, to contribute to enable us to maintain our ground until the darkness closed the fight. The presence of the other brigade would undoubtedly have been of immense benefit.

Question. Did, or did not, you regard the withdrawal of those brigades from General Porter's command, under the circumstances, a clear violation of the order issued to him to report with his command on the battle-field?

Question objected to by a member of the court.

The room was cleared, and the court proceeded to deliberate with closed doors.

After some time the doors were reopened; whereupon the judge-advocate stated the decision of the court to be that the question should be propounded to the witness.

Question (repeated). Did, or did not, you regard the withdrawal of those brigades from General Porter's command, under the circumstances, a clear violation of the order issued to him to report with his command on the battle-field?

Answer. Undoubtedly.

Question. Will you state to the court whether or not you had made known to General Porter the position of the enemy's forces, and your

plans and intentions, so far and so fully that he knew the critical condition of your army, and the importance of rapid movements and prompt and energetic action to secure your supplies and to guarantee success?

Answer. It has been my habit to talk very freely with all officers having large commands in the army which I commanded. How far I informed General Porter I am not now able to say. But I should presume, from my habitual practice, and from conversations that I had with him, that he understood pretty fully the condition of the army and the position of the various corps of the army. What I regarded as a necessity, it is altogether possible he might have had a different opinion about. Therefore, I cannot say that he understood the necessity which I understood.

Question. What I meant to ask was, whether he was not fully aware of your own convictions as to the necessity of prompt and vigorous movements to save your army?

Answer. I cannot say, of my own knowledge, that he knew that. It seems to me that he ought to have known it; beyond that, I cannot say.

Question. Did, or did not, in your judgment, the safety of your army and of the capital at this crisis require extraordinary personal exertions and sacrifices on the part of all your command?

Answer. I certainly so understood it, or several of the battles which I fought there against superior forces I should not have fought.

By the ACCUSED:

Question. At what time after the order of the 27th of August, and where, did you see the accused?

Answer. I saw him at Bristoe Station, where I had passed the night, and to which point he had been ordered.

Question. At what time of the day or night?

Answer. I think about 8 o'clock in the morning of the 28th.

Question. Had you any conversation with him in relation to the order of the 27th, and his having obeyed or disobeyed it; and, if so, what?

Answer. I do not remember having any conversation with him in reference to obeying or disobeying the order, although I had much conversation with him.

Question. Try to recollect if you complained to him then, at any time during that conversation, that he had not obeyed the order of the 27th, or whether he gave to you any explanation in relation to what he had done under that order.

Answer. I should not be likely to complain to my subordinate officer of a disobedience to my orders. I am, therefore, very sure that I did not complain to General Porter. I am not sure that he gave me any explanations. I have a general recollection that he spoke to me of his march, and the difficulties that he had in getting wagons out of the road; but the particulars I do not remember, as I was very much occupied, and the necessity which made his presence important had passed away. His conversation on that subject, therefore, failed to make an impression upon my mind. I have a general remembrance that he gave me some account of his march, and the difficulty he had in getting through the wagon trains, but it is very indistinct.

Question. Recollect, if you can, whether, upon hearing his explanations, you did or did not express yourself satisfied.

Answer. No, sir; I have no remembrance of that.

Question. Are you certain that you did not?

Answer. I cannot be positively certain that I did not, but I am sure that it is quite impossible that I could have been satisfied.

Question. Did you at any other time, or on the day of the 28th, express yourself as having been satisfied with the manner in which he had carried out, or tried to carry out, your orders?

Answer. No, sir. I had a conversation with General Porter at Fairfax Court-House, in which I told him, as distinctly as I thought it was necessary to tell him, that I was not satisfied, and I did so in consequence of a question of General Porter, which he seemed to make a point of to me, in asking at Fairfax Court-House whether I had had any occasion to be dissatisfied with the manner in which he had discharged his duties. I replied to him that I had had occasion to be dissatisfied, and mentioned certain particulars, I think, in which I had had that occasion.

Question. Will you state the particulars in which at that period you expressed yourself dissatisfied?

Answer. I mentioned, as well as I recollect, the disobedience of orders at Bristoe Station, and his failure on the field of battle on the 29th. I also mentioned to him the absence of Griffin's command, and its remaining the whole day at Centreville, in sight of the battle-field, and not coming on the field, as being among the reasons I had for being dissatisfied.

Question. Did he give you any, and, if so, what, explanation in answer to your expressions of dissatisfaction?

Answer. I understood him to say in relation to Griffin that he did not know, did not understand exactly how Griffin had got to Centreville. In relation to the other matters, I do not know that he gave any explanation. It was no time for explanations. We were at Fairfax Court-House, in the midst of a great deal of confusion, troops passing backward and forward, and we were expecting to move at any moment. This conversation occurred in two or three minutes, I should think. He was in the room where I was. Perhaps three minutes covered the whole time we were talking.

Question. Are you sure it was not longer; say, about a half an hour?

Answer. I think not a half an hour. I should think five minutes would cover what conversation General Porter and I had there. It might, perhaps, have been more, but that is my recollection of it.

Question. If you can recollect, state who were in the room besides yourself and General Porter.

Answer. There were several persons in the room, four or five, perhaps, if not more than that; I do not now recollect who they were. The conversation I had with General Porter was while I was sitting on a sofa on one side of the room. Persons were coming in and going out. There were quite a number of persons in the room. I do not now remember who were there.

Question. Can you recollect the name of any one person who was in the room? If so, state it.

Answer. I have a general impression that General Hooker was there; McDowell, I think, was there; if not at the moment, they were back and forth in the room; possibly Heintzelman was there also.

Question. Do you remember whether Colonel Ruggles was there or not?

Answer. I think it altogether likely he was there, although I do not remember.

Question. Have you at any time, and when, had a conversation with Colonel Ruggles in relation to what passed between you and the accused on the occasion referred to? And, if you had, state what it was.

Answer. I do not remember to have had any conversation with Colonel Ruggles on that subject, though I mentioned to one or two persons about that time, perhaps a short time afterward, that General Porter had asked at Fairfax Court-House in relation to his conduct. It is possible that Colonel Ruggles may have been among the persons who heard these remarks, and to whom I made remarks; I am not sure about that.

Question. Try and recollect if you had a conversation with Colonel Ruggles, after your final report of the battles, in relation to the charges and imputations against the accused, and whether he did not tell you that he had heard you say to the accused that you had no fault to find with him.

Answer. I have no remembrance of any such conversation.

Question. Are you certain that you had not?

Answer. I am not certain that I had not, but I am very certain that Colonel Ruggles never stated a thing of that kind to me; I feel quite sure of it, although I am not prepared to swear that he did not; I have no knowledge of it.

Question. State on what day, if you can remember, you had the conversation with the accused at Fairfax Court-House.

Answer. I think it was on Tuesday morning, the 2d of September.

Question. Say, if you can, what led to the conversation between the accused and yourself on that occasion.

Answer. I think what led to it was that General Porter came into the room and brought me a telegraphic dispatch, or a dispatch of some kind, from General McClellan, in which General McClellan urges General Porter to support me in the operations of the army. The exact character of that dispatch I do not remember, whether it was telegraphic or otherwise. I have repeated the substance of it.

Question. Is the paper now shown you, marked "Accused, Exhibit No. 1," that dispatch?

Answer. [Examining it.] I think that is the dispatch. This is the substance of the impression made upon my mind by it. I did not read it very carefully; but it seems to me this is it.

The dispatch was then read, as follows:

WAR DEPARTMENT,
September 1, 1862—5.30 p. m.

Major-General PORTER,
Centreville, Commanding Sixth Corps:

I ask of you, for my sake, that of the country, and of the old Army of the Potomac, that you and all friends will lend the fullest and most cordial co-operation to General Pope in all the operations now going on. The distresses of our country, the honor of our arms, are at stake, and all depends upon the cheerful co-operation of all in the field. This week is the crisis of our fate. Say the same thing to all my friends in the Army of the Potomac, and that the last request I have to make of them is that, for their country's sake, they will extend to General Pope the same support they ever have to me.

I am in charge of the defenses of Washington, and am doing all I can to render your retreat safe, should that become necessary.

GEO. B. McCLELLAN,
Major-General.

Question. Do you remember what the accused said in relation to the fact that he had received such a dispatch; and if he asked you if you knew why such a dispatch should be sent to him?

Answer. I do not think he asked me that question. He asked me why I supposed such a dispatch had been sent to him, seeming to apprehend, or to believe, or to suspect, that I had reported his conduct to Washington, and made complaints of him which made it necessary for this dispatch to be sent. I told General Porter that I had not reported him to the Department in Washington; and that, as matters stood, I thought I should not take any action in reference to his case, though I felt bound to do so in the case of Griffin. I think that is about the substance of what I have said.

Question. If, as you have stated, you were of the opinion that the army under your command had been defeated, and in danger of still greater defeat, and the capital of the country in danger of capture by the enemy, and you thought that these calamities could have been obviated if General Porter had obeyed your orders, why was it that you doubted, on the 2d of September, whether you would or would not take any action against him?

The witness declined to answer the question, as not being relevant to this investigation.

The room was cleared, and the court proceeded to deliberate with closed doors.

After some time the doors were reopened; whereupon the judge-

advocate stated the decision of the court to be that the question was irrelevant.

To this decision of the court the accused submitted a protest in writing, and asked that the same be entered upon the record.

The room was then cleared, and the court proceeded to deliberate with closed doors.

After some time the doors were reopened, and the judge-advocate stated that the court determined to hold the question as to the disposition to be made of this paper under advisement until to-morrow.

Whereupon the court adjourned to 11 a. m. to-morrow.

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WASHINGTON, D. C., *December* 5, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

The protest, in writing, submitted by the accused, and which was under consideration by the court yesterday at the hour of adjournment, was then read by the judge-advocate. It is as follows:

The witness having, in his examination-in-chief, attributed the disasters of the army under his command in Virginia in August last to the failure of the accused to obey all or some of his orders, and having stated that he was of the opinion that such orders might have been obeyed, and it being, so far as the prosecution has gone, upon his evidence that such disobedience occurred that the prosecution has endeavored to be maintained, the accused is advised by his counsel that the question just ruled out by the court is not only relevant and legal but most material, in order to show that the recollection of the witness in such his examination-in-chief is not to be relied upon; and that he for the first time afterward charged the alleged disobedience upon the accused; because it was the duty of the witness, not only not to doubt whether he would take any action in relation to the matter, but to report the same as a grave offense on the part of the accused; and his determination or doubt whether he would take such action, or make such report, are facts not only admissible but material evidence that at the time to which the question relates he did not believe there had been any such disobedience on the part of the accused, and, therefore, respectfully request to have this protest entered on the proceedings of the court against the exclusion of the question referred to.

F. J. PORTER,
Major-General.

The judge-advocate said: The witness requests the permission of the court to answer the question referred to in the protest just read.

The accused made no objection.

The room was thereupon cleared, and the court proceeded to deliberate with closed doors.

Some time after the doors were reopened, and the judge-advocate announced the decision of the court to be that the witness have permission to answer the question referred to.

The question was then read to the witness as follows:

Question. If, as you have stated, you were of the opinion that the army under your command had been defeated, and in danger of still greater defeat, and the capital of the country in danger of capture by the enemy, and you thought these calamities could have been obviated

if General Porter had obeyed your orders, why was it that you doubted, on the 2d of September, whether you would or would not take any action against him?

To which the witness made answer as follows:

Answer. I would state that on the night of the 29th of August, when I found that General Porter did not make his appearance upon the field, and when I had received the dispatch which he wrote to Generals McDowell and King, stating that he was about to fall back to Manassas Junction, I determined to arrest him, and had, I think, commenced to dictate the order for that purpose. I was persuaded not to do so by several officers who were about me at the time, and changed the order into the one that appears in one of the specifications of these charges. I have endeavored, at the suggestion of the counsel for the accused, to remember, as far as possible, the conversations which are stated to have taken place between myself and General Porter. I will recur to the conversation which occurred at Fairfax Court-House, as it is a necessary part of this answer. I now remember a portion of that conversation which I could not recall yesterday, and which I will repeat here. I said to General Porter that I had received information from friends of mine in Washington that he (General Porter) had written letters or sent dispatches to General Burnside, dated before he had joined me, which criticized my conduct, my military capacity, and the campaign which I was conducting, very severely, and which exhibited an exceedingly unkind spirit. I asked General Porter whether he did not consider it unfair and unjust to me for him to have written such a letter before he had seen me; before he knew the orders under which I was acting; before he knew the condition of the army and the disposition of it, or of the army of the enemy; before, in fact, he knew anything about the plan of campaign, as far as I was concerned; whether he did not consider it unfair and unjust to me to have written such a letter, as he was on the point of joining me. He seemed surprised that his letter had become known, and stated to me that it was a private letter of his to General Burnside, which he had never intended to go further than General Burnside; that General Kearny had expressed opinions opposite to his own on the subject of the campaign, and that, therefore, both sides of the question would now be heard. He expressed his regret to me that he had written the letter, under the circumstances, without knowing the facts; said that he was sorry he had done so. After this remark, I told General Porter I was satisfied that in writing this letter he had not intended to hold back from any proper co-operation with me; that it was merely an expression of his private opinion, in a private letter to another officer. Although I considered that it was unfair and unjust to have written such a letter, yet I was satisfied when he said he thought it was not right. And I said to General Porter that I thought I would not push the matter against him further, or did not propose to take any further action in the matter of his conduct previously in the campaign. I said so at Fairfax Court-House, because I did not at that time believe that General Porter deliberately and of purpose had withheld his command from the assistance of the army engaged in that battle. I am a frank, open man, and slow to entertain suspicions of so grave a character against an officer. Although I had been warned by several officers a day or two previously that he would fail me, I did not believe so at Fairfax Court-House. General Porter could not have believed—I am sure I had no idea that he believed—when I stated that I did not design to take any further action against him, that I meant to say that I did not design, in my official reports of the operations of the army, to set forth all the facts as they had transpired on the field. This is all I have yet done. I have not preferred charges against him. I have merely set forth the facts in my official reports, which embrace the operations of everybody else connected with that army, as well as of General Porter. It was not until the campaign was closed, and I came to Washington City, on the 4th or 5th of September, that I was informed by the President of the United States that he had seen several dispatches or letters from General Porter to General Burnside, dated a day or two previous to these battles, which had occasioned him very grave apprehensions that General Porter would fail to do his duty. This communication of the President to me opened my eyes to many matters which I had before been loth to believe, and which I cannot bring myself now to believe. I will now proceed to answer the preface to this question which has been put to me. The question is prefaced by a representation that I have here given certain testimony and made certain statements which I have not made, and which will not be found upon the records of this court. Why the question is put in that shape, when the record is before the court and before the counsel for the accused, I am not able to say. Certainly no such statements as those have been made by me. The reason why I did not put these charges against General Porter, and why I told him, at Fairfax Court-House, that I thought I should take no further action, was, that I did not then believe that General Porter's conduct was deliberate and of purpose, but I was inclined to think that his action or want of action there was the result of mistake or blundering rather than of intention. But I

never for a moment had an idea of withholding from the knowledge of the Government a full detail of facts, which, as every member of this court must know, every officer commanding an army is required to give in his official report concerning every important transaction that takes place in his command. I will say to the court that I have answered this question, and only should have answered it, in consequence of the manner in which the protest of the accused was presented to the court, which protest sought to present me in a false light. I answer it with reluctance, and I respectfully submit to the court that that sort of questions are not relevant to this case, and I would say to them respectfully that I shall decline, unless they insist upon it, to answer any such questions in future.

Examination by the ACCUSED continued:

Question. Will you state by whom and when you were told or cautioned that the accused would not obey your orders or co-operate with you?

Answer. I would prefer the question to be put in the form in which I made my statement. I said that "General Porter would fail me." That was the statement I made. I do not like to have these questions put so as to seem to imply that I have made statements which I have not made.

Question. I will put it in that form. I understood it the other way. By whom were you told or cautioned that the accused would fail you, and when were you so told?

Answer. I think on the 27th of August, and again, I think, on the 28th of August, by General Roberts, and on the night of the 28th of August by Lieutenant-Colonel Smith.

Question. Is the General Roberts you refer to the same officer who exhibits these charges?

Answer. I do not know of my own knowledge who exhibits these charges.

Question. It is Brigadier-General Roberts. Is there any other General Roberts?

Answer. I do not know of any other.

The judge-advocate admitted that it was the same officer.

Question. Are those the only two officers from whom you got this information?

Answer. Those are the only two that I remember distinctly. I heard much talk of that kind from many others, but I do not remember who they are. I heard it on several occasions.

Question. Will you state whether you informed the accused, in the conversation at Fairfax Court-House, or before or after, that it had been your purpose to put him under arrest?

Answer. I do not think I informed him at all on the subject.

Question. Will you state by whom you were advised not to put him under arrest?

Answer. By General McDowell, for one; by General Roberts, I think, for another; by General Hooker, I think, for a third, and, I think, by General Heintzelman.

Question. State, if you can remember, if the accused proposed to answer the dispatch of Major-General McClellan by telegraph, and whether he was, or was not, permitted to use the telegraph.

The judge-advocate objected to the question.

The accused said he proposed to follow up that question, if allowed by the court, by asking the witness if the paper, which would be shown to him, was not the answer proposed to be sent.

The room was cleared, and the court proceeded to deliberate with closed doors.

After some time the doors were reopened, and the judge-advocate announced that the court sustained the objection.

The accused inquired of the court if, under that decision, he would be allowed to use, in the examination of this witness, the paper purporting to be the answer proposed to be sent to General McClellan.

The president of the court said the paper could be used in the defense of the accused, but, under the decision of the court, not in the examination of this witness.

The judge-advocate said that, at the request of the witness, he would withdraw his objection, as the witness expressed a desire to be permitted to answer the question.

To which no objection was made.

The question was then read to the witness, as follows:

Question. State, if you can remember, if the accused proposed to answer the dispatch of Major-General McClellan by telegraph, and whether he was, or was not, permitted to use the telegraph; and is this the paper which the accused at that time exhibited as the answer he proposed to send?

The paper marked "Accused, Exhibit No. 2," was then read, as follows:

FAIRFAX COURT-HOUSE, *September* 2, 1862—10 a. m.

General GEO. B. MCCLELLAN, *Washington:*

You may rest assured that all your friends, as well as every lover of his country, will ever give, as they have given, to General Pope their cordial co-operation and constant support in the execution of all orders and plans. Our killed, wounded, and enfeebled troops attest our devoted duty.

F. J. PORTER,
Major-General, Commanding.

Answer. I am not sure that I read this dispatch. I think I did not. But I remember that General Porter said something to me or asked permission from me to send a telegraphic dispatch, I think, in reply to this dispatch of General McClellan. I stated to him that I had, many days previously, received positive orders from General Halleck to allow no dispatches of any description to pass over the telegraphic line, except official dispatches signed by myself. I had never permitted anybody to send such dispatches, unless countersigned by me on official business; nor had I myself taken the liberty of sending any dispatches, except official dispatches on army business, as I did not consider myself justified in doing so under the orders from the General-in-Chief.

Question. Try to recollect whether you objected to that part of the paper just read which speaks of "co-operation," and, if you did, what the objection was.

Answer. I have stated that I do not think I read the paper. I certainly do not remember its contents. The only objection, and an objection which would have held against any dispatch, was the order of my superior officer.

Question. State, if you can remember, whether you did not at that time inform the accused that, in consequence of a dispatch from him that had been intercepted by the War Office, you were of opinion that he was not disposed to co-operate with you.

Answer. I think I have already answered that question in recounting my conversation at Fairfax Court-House; that I called General Porter's attention to that dispatch, which was sent by him before he joined me.

Question. The question is, whether it was in reference to his actual co-operating or his purpose to co-operate with you.

Answer. "Co-operation" is a word that I do not exactly understand in connection with military matters. Do you mean to say that I suspected that General Porter would not do his duty? That, perhaps, is the better word. I do not understand that he co-operated with me, being under my command.

Question. "Co-operation" and "support" are the two words in that paper.

Answer. I do not know that I stated to him that I was fearful he would not co-operate with me; but I told him of this letter, and I think I must have given him to suppose, at least, that I entertained a fear that his feelings would prevent his doing all that he could. I do not know that I said even that much to him.

Question. Did you at any time, and when, after the 30th of August, consult with the accused, as one of a board of officers, as to the best disposition to be made of the army under your command as it then stood?

Answer. At Centreville, I think, on the 31st of August—it may, perhaps, have been upon the 1st of September, but I am inclined to think it was on the 31st of August—I sent for the commanders of army corps belonging to that army, and desired them—not together, but as they came in—to inform me of the condition of their commands, and to give me their opinions as to the best course to be pursued. That is the extent of any consultation that I had with them that I know of.

Question. Was the accused one of the commanders of corps at that time that you consulted?

Answer. Yes, sir. I sent for all commanders of army corps, of which General Porter was one.

Question. Did he give his opinion?

Answer. Several of the corps commanders did express opinions. In the midst of it, and during the course of their coming in and giving their opinions, I received a dispatch from the General-in-Chief in Washington, which gave me such directions concerning the course I was to pursue as rendered any further expression of opinion unnecessary. I do not now remember whether General Porter was one who gave his opinion, as the order of the General-in-Chief took away all consequence from the opinions such as they would have had otherwise. There were several who did not give opinions. I remember General Porter being present, but whether he expressed any opinion or not, I do not remember.

Question. At what time of the day, of the 31st of August, or the 1st of September—whichever may have been the time of the council—did you receive the dispatch from the General-in-Chief?

Answer. I do not remember exactly; but I think about midday.

Question. You have said, in answer to one of the interrogatories-in-chief, that you had traveled over the roads or road upon which the column of the accused would have to pass under the order of the 27th of August, and that there was nothing in the condition of the road at that time, in your opinion, to prevent his compliance with that order within the time prescribed by the order. Will you state on what day and at what time of the day you passed over the road?

Answer. I will state first that I have not made exactly the statement contained in that question. I did not state that the condition of the road was such that he could have brought up his whole command in the time specified by that order. That he could have brought up his infantry, I did state. I stated in my former answer that I did not think the wagon trains would have occasioned any considerable delay in the movement of the artillery. I passed over the road between 12 o'clock and 6 o'clock in the afternoon of the 27th of August. The road was then in good order. All the stragglers, and a considerable portion of the infantry of Hooker's command, were marching along the railroad track. The road was sometimes on one side of the railroad track and sometimes on the other. I think the most of the way the road was on both sides of the railroad track. The trains of the army were on the road proceeding eastward in the rear of Hooker's division. But I passed through the trains myself, keeping the road all the time. I passed through the trains with a considerable cavalry escort, bringing with me some twelve or fifteen wagons which got through the trains, and arrived at Bristoe Station a little after dark.

Question. How long did it take you yourself to go?

Answer. I think it was about 12 o'clock that I started—it might have been later

than that. I got on the battle field near Bristoe Station, perhaps, at 5 o'clock. I did not ride directly to the field. I endeavored to bring up the stragglers. And I halted for a time where the first skirmish had taken place, and looked at the wounded and dead that were there. I did not proceed directly through, but delayed considerably on the way.

Question. Do you know at what time of the night of the 27th of August the accused received your order of that date?

Answer. I only know from the report of the aide-de-camp who delivered the order. It was reported to me that he delivered the order about 15 minutes after 9 o'clock.

Question. Will you state whether the moon was shining or whether there was a moon at that time?

Answer. I think, as clearly as I can remember, there was no moon. I am quite sure it was not moonlight.

Question. Try and recollect if, between 11 and 12 o'clock, it was not drizzling with rain and very dark.

Answer. I slept on the ground that night with an overcoat, without any shelter whatever. I have no remembrance of any rain at all. I slept very soundly at that hour of the night, having been up a great deal, and a slight drizzle I might, perhaps, have been unconscious of. I have no knowledge that there was any.

Question. In the order of the 27th August you direct the accused, "Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run." If that was done, what, in your opinion, would be the effect upon the condition of the road?

Answer. The railroad would, for a considerable space, have been filled with standing cars. But Banks was not at Warrenton Junction, and it is not at all to be supposed, nor could it have been possible, without doing the work in the night, to run the railroad trains back in advance of General Porter's movement, nor was it so intended.

Question. You state that Banks was not at Warrenton Junction?

Answer. He was not there when I left Warrenton Junction, and I had had no report that he had arrived there.

Question. In the postscript to that order you say to the accused: "If Banks is not at the Junction, instruct Clary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it." Are you to be understood now as saying that it was not your purpose to have that part of the order carried out until the accused had marched with his force?

Answer. Yes, sir; it is my purpose to say so.

Question. Will you state whether, in your opinion, the condition of the roads to which you have referred, as they were between 9½ and 1 p. m., was, or was not, such that the accused could have started at 1 o'clock that night and forwarded his whole force so as to be at the point to which you directed him to march by daylight in the morning?

Answer. As I have previously stated, I have no doubt his infantry could have done so. It might be, possibly, that his artillery would have been delayed longer. But I considered it his duty, at all events, to have made the attempt.

Question. Did you authorize him in that order, or at any other time, to make the march indicated in the order with his infantry, leaving his artillery behind?

Answer. The order specifies in words precisely what I intended. I am not aware that it was modified or countermanded in any way whatsoever.

Question. Did you receive from the accused, after you sent him the order just referred to, a note or a message requesting you to have your

end of the road cleared, so as to enable the accused to get to you as rapidly or as fast as he could with his corps?

Answer. I received at least one such request—probably more than that. I am inclined to think two—one I am sure of, to that effect. And I sent officers back to try and clear the road of wagons, as far as possible, to facilitate his movements as much as I could.

Question. When you received the message or messages of which you have just spoken, do you know whether the accused was on his march, in obedience to your order of the 27th of August?

Answer. I do not know that he was. On the contrary, from a note that I had received from him, I did not understand that he would march until daylight in the morning.

Question. Have you in your possession, or can you readily find in this city, that note?

Answer. I cannot, as I stated in my evidence yesterday. As the same statements contained in the note were made to my aide-de-camp, if other testimony on that subject is necessary it can be got from him.

Question. When you received the note which, according to your recollection, stated that he would be unable to march, or would not march, until daylight, will you state at what hour you received it?

Answer. I think that in my testimony I stated that it was quite late in the night. I do not remember exactly the hour; I think toward morning, toward daylight; perhaps a little before that.

Question. Did you take any steps by message, or order in another form, to the accused, to expedite his march?

Answer. I sent back several officers to try and see General Porter, and request him to hurry up and report to me where his troops were, as I was very apprehensive that after day had dawned we should have an attack upon us from the enemy.

Question. Did said officers return; and, if so, what report did they make to you?

Answer. I think they all returned. The report made to me was that General Porter was coming along very slowly, and was pushing the wagons out of the road.

Question. Have you said that the road was a double one—the road other than the railroad?

Answer. I have said that parts of the way it was so; how far, I do not know.

Question. What do you mean by a "double road?"

Answer. I meant by that merely that there was a track for wagons on each side of the railroad.

Question. Wagons could go abreast, with the railroad between them?

Answer. Part of the way.

Question. Do you know at what time the accused received your order dated "Centreville, August 29, 1862?"

Answer. I do not know at what time he received it.

Question. Do you recollect—if so, state—at what time you sent it?

Answer. As I stated in my testimony yesterday, as far as my remembrance goes, it was somewhere between 8 and 9 o'clock in the morning. It was my practice to mark upon every order I issued the precise hour at which it was sent. I have not seen the order for a long time. I think there is an indorsement, at the bottom of the copy of the order, of the time it was delivered. My own recollection is that it was sent between 8 and 9 o'clock in the morning; it might have been later than that.

Question. In the order of the 29th August you state that you had sent General Porter written orders to the effect stated in that order of

the 29th an hour and a half before. Will you look at this paper, marked "Accused, Exhibit 3," and say if that is the order referred to as having been previously sent?

The paper was read, as follows:

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29, 1862.

Maj. Gen. FITZ JOHN PORTER:

Push forward with your corps, and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious, or we will lose much.

JNO. POPE,
Major-General, Commanding.

Answer. That is the order.

Question. Was it your purpose in the last order of which you have spoken—the one referred to in the joint order set forth in specification second of charge first—to supersede the prior order that you had given the accused?

Answer. It is hardly worth while for the accused, an officer of the army, to ask me whether a later order would supersede a previous one. Most undoubtedly he should obey the last order he gets.

Question. Is this—"Accused, Exhibit 4"—the antecedent order which you intended to revoke?

The order was read, as follows:

HEADQUARTERS ARMY OF VIRGINIA,
Near Bull Run, August 29, 1862—3 a. m.

Major-General PORTER:

GENERAL: McDowell has intercepted the retreat of Jackson; Sigel is immediately on the right of McDowell; Kearny and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville, at the first dawn of day, with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

I am, general, very respectfully, your obedient servant,

GEO. D. RUGGLES,
Colonel and Chief of Staff.

Answer. That is the one.

Question. Did you know, when you issued the order of the 29th August, referred to in the order of the same date set out in Specification No. 2 of Charge 1, that the accused was then engaged in the execution of the order just shown you?

Answer. I did not know that he was; but the order was intended, even if he were in the execution of that order, to direct his movement in a different direction.

Question. Did you know, when you issued the order of the 29th August, set out in the specification referred to, that the accused was then executing the one which that states had been given him an hour and a half before?

Answer. I did not know it; as Dr. Abbott had come from General Porter, as I understood, to learn if I had any orders for him, I stated to Dr. Abbott that I had sent General Porter orders an hour and a half before, and I repeated that statement in the order which I sent to Generals Porter and McDowell, I think by Dr. Abbott himself.

Question. Did you receive from Dr. Abbott a note from the accused; and, if so, can you recollect what, in substance, were the contents of that note?

Answer. I have an indistinct remembrance of receiving a note, but I do not remember the contents at all; my impression is, that I got from Dr. Abbott himself the information upon which I sent back by him the order to General Porter.

Question. Do you think you have that note with you in Washington; and, if so, will you produce it to-morrow?

Answer. I certainly will produce it if it can possibly be found; I do not know whether I have it or not; I have a great number of papers.

Question. Try to recollect if that note gave you information of the position of Ricketts' and King's commands, and that Sigel and Reynolds would retire, and that the accused got that information from McDowell; and, as he had received only a verbal order to move on Gainesville, requested that you would send him a written order; and, if so, did you send by Dr. Abbott, or any one else, a written order?

Answer. Since the fact of asking for a written order is mentioned, I think General Porter did send to request me to send him a written order, which I subsequently sent by Dr. Abbott; having previously, however, an hour and a half before, sent him a written order substantially to the same effect.

Question. Is the order to which you last referred in your answer the order mentioned in the joint order of the 29th August, and set forth in specification 2 to charge 1?

Answer. Yes, sir; that is the order.

Question. Will you now state whether the joint order of the 29th August, set forth in the specification referred to, was not sent the accused in consequence of the request of his note?

Answer. I received a note from General McDowell about the time, I think, that Dr. Abbott came to me from General Porter, in which General McDowell referred to the order which I had sent to General Porter, to which reference is made in the joint order to Generals Porter and McDowell, and asked that King's division may be returned to him and not assigned to the command of General Porter. It was in consideration of General McDowell's request—and perhaps somewhat due to the request for a written order that I had received from General Porter, though I did not remember it at the time I answered—that this joint order was written, which relieved King's division from service with Porter's corps.

Question. Was not the purpose of the joint order of the 29th August to place the entire commands mentioned in that order under the command of Major-General McDowell?

Answer. It was not.

Question. Was not General McDowell the prior, in point of rank, to General Porter?

Answer. He was the senior.

Question. Will you state now, as a military man, whether, that being the fact, the effect of the joint order of the 29th August was not to place the forces mentioned in that order under the command of General McDowell?

Answer. General McDowell had the authority, as the senior officer, to command the two corps while acting together, and not under the immediate orders of the general commanding the army. I did not, however, intend at the time that he should do so, but that the two corps should act separately, though, when they were joined, of course, if General McDowell chose to assume the command, he had the right, for the time, to do so.

Question. Did you communicate to the accused, in writing or by message, that the joint order of the 29th August was not to have the effect which, in point of law, it was entitled to by its terms?

Answer. No, sir; I made no communication to him on the subject beyond the joint order contained in the specification.

Question. Will you state on what road you intended General Porter

should march to Gainesville, in the execution of your written order referred to in the joint order of the 29th August?

Answer. I intended him to march on the direct road from Manassas Junction to Gainesville.

Question. Would that road have brought the accused and his command to the battle-field at Groveton?

Answer. It would not have brought them onto the battle-field at Groveton. At the time that order was issued, it was not known exactly where the enemy could be brought to a stand. The object of the movement, therefore, was to bring the different corps of the army in such a position that they could always assail the enemy at any point between where he was then on the Warrenton turnpike and Gainesville. The Warrenton turnpike, upon which the enemy was retreating, and the road from Manassas Junction to Gainesville, come together at Gainesville. Therefore, in marching from Manassas Junction to Gainesville, you are all the time approaching the Warrenton turnpike.

At this stage of the examination the court adjourned to 11 a. m. tomorrow.

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WASHINGTON, D. C., *December* 6, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the preceding session were read and approved.

The judge-advocate here mentioned to the court that gross inaccuracies, in the publication of the testimony given before this court by Major-General Pope, had been brought to his notice as having occurred in several newspapers.

Whereupon the court was cleared.

After some time the court was reopened, and the judge-advocate announced that, in view of the statement made by the judge-advocate, the court desire the president of the court to caution reporters that, if incorrect reports of evidence and proceedings in this court continue to appear in the public press, the court may find it necessary to take such action as will correct the abuse.

The president thereupon accordingly cautioned those reporters who were present.

The examination of Maj. Gen. JOHN POPE was then resumed by the accused, as follows:

Question. Will you state, as accurately as you can, in what particular the accused failed to carry out your joint order of the 29th of August?

Answer. I can only state the facts from the reports of others, as I did not myself see the accused during the 29th of August, nor did I know of his exact position on that day until it was reported to me by my aide-de-camp, quite late in the evening, when he returned from the delivery of the order to him.

Question. Will you state, as accurately as you can recollect, from the information that you have received up to the present time from any quarter, in what particular or particulars the accused failed to carry out that joint order?

Answer. I have stated that the accused had failed, in my opinion, to carry out that order, first, because I believed that if he had attacked the enemy on the flank, as he

was directed, I should have known it, being myself on the field of battle and near to the front. In relation to the joint order of the 29th, I have General Porter's note to Generals McDowell and King, in which he himself states that he has not fully obeyed that joint order of the 29th of August.

The judge-advocate produced and read a paper as follows:

Generals McDOWELL and KING:

I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and, as they appear to have driven our forces back, the firing of e. emy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going. Had you not better send your train back?

F. J. PORTER,
Major-General.

and will communicate with you.

By the JUDGE-ADVOCATE:

Question. Is this the note of the accused to which you refer?

Answer. That is the note.

By the ACCUSED:

Question. Will you state on what day, and at what hour of the day, you received the note just read?

Answer. I received it on the night of the 29th of August; I think between 7 and 8 o'clock in the evening.

Question. Did you, after that time, and after the receipt of that note, receive another note from the accused; and, if so, have you that other note?

Answer. I do not remember to have received another note; I certainly have not got it anywhere amongst my papers.

Question. Have you any recollection now, without looking at the paper, that you admit in your official report the reception of that other note?

Answer. No, sir; I have not. The note to which I refer in my official report was the note to Generals McDowell and King which I received. That note, as I understand, was brought direct to me, and not delivered to General McDowell, and, so far as I understand, not to General King.

Question. If you did not receive another note, did you receive information from the accused as to his position after the reception of the note which has been produced?

Answer. The only information that I remember to have received of the position of the accused I received from General McDowell when he arrived on the field, and from my aide-de-camp, who reported his position when he returned from delivering him the order dated at half-past 4 in the afternoon. I do not remember to have received any other information.

Question. Recollect, if you can, whether you received a note by the hands of one of your own aides, after the reception of the first note, stating that the accused was there in position, and could hold it, and perhaps attack, if strengthened by the division you had taken from him—King's division—or another?

Answer. I do not remember to have received a note; but I remember that my aide-de-camp told me that General Porter stated to him, or in his hearing—perhaps sent me word; I am not quite sure about that—that if he had King's division, he could make a dash, or something of that kind. Whether it came in a note or by word of mouth, I am not clear; I rather think it was brought to me by the aide-de-camp, as near as I can remember, who carried my order to General Porter.

Question. If you have the note, will you produce it?

Answer. Certainly, if I have it. This suggestion of General Porter, whether oral or in writing, made no impression upon me, because King's division was at that time, or about that time, engaged in an action with the enemy in our immediate front, and there were no troops to spare that could be sent to General Porter. In fact, I thought he already had force sufficient to have accomplished during the day the purpose implied in the order of half-past 4 o'clock.

Question. Was Morell's division a part of the command of the accused?

Answer. Yes, sir. It was a part of his army corps, which I presumed to be with him.

Question. Recollect, if you can, whether you received from the accused information, orally or in writing, that Morell was there, where the note was written or the information sent from, ready to engage the enemy?

Answer. I do not remember to have received that information, though, in sending the order at half-past 4 o'clock, I presumed that General Porter was ready with his whole corps to engage the enemy.

Question. Where, if you recollect, did you suppose the accused with his command was when you issued your order to him of the 29th August, at 4.30 p. m.?

Answer. I supposed him to be somewhere on the road between Manassas Junction and Gainesville, and by that time far advanced toward Gainesville on that road.

Question. Would the accused, by obeying the joint order of the 29th August, have been brought up in front of the enemy at 4½ o'clock of that evening; and, if so, at what point of the enemy's line?

Answer. As I have stated in my testimony, when that joint order was issued, I was not certain at what point, if at any, of the Warrenton turnpike east of Gainesville, the enemy could be brought to a stand. The joint movement of McDowell and Porter was, therefore, made so as to intersect the Warrenton turnpike at Gainesville, and being on a road which constantly converges toward the Warrenton turnpike, those two corps would have been near enough to the turnpike, in case the enemy were brought to a stand at any point of it, to be brought on the field within a short time. I could not tell, of course, at the time that order was issued, not knowing where the enemy would be brought to a stand or whether he would be brought to a stand or not, whether the forces of McDowell and Porter would come up in his front or on his flank.

Question. Do you know now where, in point of fact, the accused was with his command, in whole or in part, at 4½ p. m. of the 29th August, and where the enemy nearest to him at that time were?

Answer. Of my own knowledge, I do not.

Question. Without knowing the relative position of the forces under the command of the accused and of the enemy at 4.30 p. m. of the 29th of August, how could you have been certain, if you were, that it would be in the power of the accused to turn the enemy's right flank?

Answer. I knew the position of the enemy, who occupied a line perpendicular to the Warrenton turnpike, and at or near the town of Groveton. I was sure, from the orders I had given him, that General Porter must be somewhere between Manassas Junction and Gainesville, on the road to Gainesville. So far, I knew within certain limits, though not exactly, the relative positions of General Porter and of the enemy. My belief was that the road from Manassas Junction to Gainesville either passed by the right flank or was occupied by that flank of the enemy, and that Porter's march, if pursued, conducted him either to the right flank of the enemy or past the right flank of the enemy, toward his rear.

Question. Will you point out upon the map produced by the prosecution, marked "Government, Exhibit A," the positions, as you now understand, held by the accused with his command, and by the enemy, at 4.30 p. m. of the 29th of August?

Answer. I have stated that I did not know the exact position of the accused beyond the fact that I felt sure, from the orders I had given him, that he was somewhere between Manassas Junction and Gainesville, on the direct road to Gainesville. His exact position on that road, as I said before, I do not know.

Question. Then you cannot point it out?

Answer. I do not know exactly where it was; I can point out somewhere between Manassas Junction and Gainesville.

Question. Point out as accurately as you can.

Answer [referring to the map]. I can only say he was somewhere between these two points on that road; where, I cannot say. From my orders to General Porter, he ought to have been somewhere between Manassas Junction and the town of Gainesville, on the direct road. As I understand, the road runs along the railroad; although I am not clear about that, as I have never been over it. What I mean by the direct road is the main traveled road from Manassas Junction to Gainesville, which I understood to be along or very nearly along the railroad.

Question. State, generally, where you supposed the accused to have been.

Answer. I have no supposition about it, except that I suppose he was somewhere between Manassas Junction and Gainesville. The enemy in front of us; their left, as far as we could ascertain it, was in these woods here [referring to the map], extending along, perhaps, toward Sudley Springs. But they were massed in these woods, along an old railroad grade, and they had batteries which extended along a crest of hills, across the Warrenton turnpike, and their troops extended into the woods south of that road; how far their right extended, I do not know.

Question. Did you know at that time, or do you know now, whether at that time—4.30 p. m., August 29—or about that time, Longstreet's corps, in whole or in part, had joined or were joining Jackson's?

Answer. I had feared the junction of those corps at any moment, as I knew from information that Longstreet was pushing forward to join Jackson. I therefore expected that movement of Longstreet certainly during the afternoon of the 29th. General Buford, with his cavalry, was in that direction, and I knew that he was watching for that movement, and expected him to report as soon as he could ascertain anything about it. At 4½ o'clock I had not received any report from him. He (General Buford) was at that time under the command of General McDowell.

Question. Did you know then or do you now know what line of march Longstreet's corps was taking to unite with Jackson; and, if you do, state whether that would not have carried that corps to the right of Jackson's line, as you have marked it on the map?

Answer. I expected that Longstreet—and understand now that a part of Longstreet's corps, at least, passing through Gainesville, did so—would seek to join Jackson by the Warrenton turnpike. According to my understanding of his position then, that would have brought Longstreet to the center of Jackson's line, as we understood it; though it was easy, as I supposed, though I have not been over the ground at any point between Gainesville and Groveton, to have changed the course of his column, or a part of it, so as to have brought them in on the right or the left of Jackson, as they thought proper.

Question. If, in fact, the corps of Longstreet formed on the right of Jackson, what distance of march would the accused have been compelled to have made to carry out the order of 4.30 p. m. of the 29th of August, which was "to push forward into action at once on the enemy's flank, and, if possible, on his rear?"

Answer. As I did not know the position of General Porter on the road from Manassas Junction to Gainesville at the time I wrote that order, it is impossible for me to state how far he would have had to go.

Question. That perhaps is not an answer to the question. The accused desires you to state, if you can, whether, assuming that Longstreet's corps had united on the right of Jackson's line, from what you now know or understand was the actual position of the accused and his com-

mand at 4.30 p. m. on the 29th of August, what distance of march would he have had to have made in order to strike the enemy on the flank or in the rear?

Answer. In the first place, I do not assume that at 4½ o'clock Longstreet was on Jackson's right. The accused requires me to assume certain facts.

Question. I assume them.

Answer. Very well, then, I will say further that unless I could know how the command of Longstreet was formed, what disposition for battle he had made on Jackson's right, it is impossible for me to tell how much ground he would have occupied. Therefore I cannot say where his right would have rested, even if Longstreet had been there. I cannot say, therefore, how far General Porter would have been required to march. The distance certainly would have been much less than the distance from Manassas Junction to Gainesville.

Question. Then, without knowing the facts which in your preceding answer you state you did not know at the time when the order of 4.30 p. m. of the 29th August was given, how could you then have known whether it would or would not be in the power of the accused to strike the enemy in flank and rear?

Answer. If the accused will state to the court what facts he says I am ignorant of, I may be able to answer that question. The question sets out that I was ignorant of certain facts. I should like to know what they are. It is said that I have stated myself to be ignorant of certain facts. Who states those facts, and what are those facts? And I will state further that in my previous answer I declined to assume that Longstreet was then on Jackson's right at 4.30 p. m. I am giving an answer only on the assumption of the accused that Longstreet was there, which is not a fact stated or proved.

Question. Without knowing that Longstreet's command was formed or would be formed, or without knowing what disposition for battle he had made or might make on Jackson's right, how did you certainly know when you issued the order of 4.30 p m. of the 29th of August, to attack the enemy in flank and rear, that that order could be carried out by the accused?

Answer. The accused was expected to attack, if possible—and as I understood to be practicable—the right flank of Jackson's forces, and, if possible, the rear of his forces, to prevent, if it were practicable, the junction of Longstreet's forces with Jackson's, and to crush Jackson's flank before Longstreet could effect a junction with him. I did not then believe, nor do I now believe, that at that time any considerable portion of Longstreet's corps had reached the vicinity of the field.

Question. How long did you suppose, when you issued the order of 4.30 p. m., it would take to place it in possession of the accused?

Answer. I did not then know precisely, or even nearly, at what point of the road from Manassas Junction to Gainesville the accused could be found. I could not tell, except within limits, how long it would take to deliver him the order. But I knew that an aide-de-camp, riding rapidly, could go from the field of battle to Manassas Junction, or to any point west of Manassas Junction on the Gainesville road if he found General Porter in advance of Manassas Junction, within an hour, by going at speed.

Question. Do you know whether at 5.30 p. m., or between that hour and 7 o'clock, the accused had the enemy immediately in his front?

Answer. I do not know it, except from the reports of others, though I would think it altogether likely that Jackson would have pushed out some force to observe the road between Gainesville and Manassas Junction. It is altogether likely, therefore, that some of Jackson's troops were in presence of General Porter's advance, though of my own knowledge I do not know that.

Question. Will you point out, if you can, upon the map, the position of each of the corps other than that of the one under command of the accused, at 4.30 p. m., August 29?

Answer. There is no difficulty in telling the position of the other corps of the army, with the exception of McDowell's, which had not then reached the field, but was on the march from Manassas Junction. Our troops confronted the line of the enemy as represented there, with Heintzelman's corps on the right, consisting of Kearny's and Hooker's divisions; a part of Reno's corps, with the whole of Sigel's corps in the center; on the left, the Pennsylvania reserves, under Reynolds, with four regiments of Reno's corps held in reserve near the Warrenton turnpike, and in rear of the center of the line. General McDowell's corps had not at that time reached the field, but was understood to be on the Sudley Springs road from Manassas Junction, which passes through Groveton. I myself occupied the hill immediately in rear of the center of our line, immediately east of the Sudley Springs road, and north of the Warrenton turnpike. Immediately in front of me was the reserve of Reno's command.

Question. State, if you can, whether the line of McDowell's march, that he made under the joint order of the 29th August, and which took him to Groveton, did not necessarily carry him to the rear of the column of the accused, and make him march in that direction past the line of the accused.

Answer. I understood from General McDowell, subsequently, that General Porter, with his corps, was a little in advance toward Gainesville—a little west of the junction of the roads leading to Gainesville and Groveton; and that McDowell's corps had passed him whilst there, taking the Sudley Springs road instead of the Gainesville road, and passing, of course, in the rear of General Porter's column. That is what I understood from reports.

Question. If General McDowell's statement was accurate as to the position of the corps of the accused, was not the accused at that time on the road which he was directed to take by the joint order of the 29th August?

Answer. Certainly I so understood it; but that he was at a halt when McDowell passed him.

Question. Are you now unable to say that you were informed or knew at 7 o'clock p. m. on the 29th of August that Longstreet's corps was up with Jackson in force?

Answer. By 7 o'clock in the evening I knew from the report of General Buford that a portion of Longstreet's force—numbering, perhaps, one-half the force under General Porter, certainly not more than two-thirds, as General Buford estimated it—had passed through Gainesville, and by that time, in all probability, had joined Jackson. The report of General Buford was in writing. He states the number of battalions, pieces of artillery, I think, and the cavalry which passed through Gainesville, according to his observation. That information came to me quite late in the evening; certainly by 7 o'clock, I think. The question put by the accused seems to imply that I have previously stated somewhere in my testimony that I did not know at 7 o'clock in the evening that portions of Longstreet's force had joined Jackson. I have nowhere so stated.

Question. That was not the purpose of the question.

Answer. The question, as I submit to the court, is written as many other questions have been to which I have objected, on account of their making me appear to have made statements which I have not made. The question, after going on with a great deal of testimony, is put in this way: "Are you *now* unable to say," as if I had previously stated differently.

Question. State in what particular the accused failed to obey the order of 8.30 p. m. of the 29th August, which order was:

Major-General PORTER:

GENERAL: Immediately upon receipt of this order, the precise hour of which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

It is signed by the witness.

Answer. I thought that he failed to obey the order entirely, because two brigades

of his command were not only not brought up with him, but by some means had either straggled or been permitted to straggle from the command, and were in Centreville.

Question. Do you mean to say that, because two brigades referred to were in Centreville, the accused entirely neglected to obey the order?

Answer. I presume that is a matter for the court to decide. My own answer to that would be a mere opinion upon the subject. That is exactly a question for the court to decide.

Question. State in what, if to any, extent the accused did obey that order or carry it out.

Answer. The accused appeared upon the field on Saturday morning, the 30th of August, with his command, excepting, so far as I am informed, the two brigades specified.

Question. At what hour of the morning did he appear with his command?

Answer. I do not know at what hour of the morning precisely; but it was somewhere between 8 and 10 o'clock, I should think; perhaps earlier than 10 o'clock, perhaps 8 o'clock. I know I made no objections in consequence of the hour that he arrived there.

Question. State now, as a military man, if the two brigades belonging to the corps of the accused had left his command without his knowledge, and had gone to Centreville in opposition to instructions, whether his failing to bring up those two brigades with the rest of his command, on the morning of the 30th of August, as you have stated he did, was, in your judgment, a disobedience of the order.

The question was objected to by a member of the court, as the answer of the witness would be a mere opinion.

The accused stated that he had asked the question under what he had supposed to be a former ruling of the court, but he acquiesced in the objection.

Question. At what time of the day on Saturday, the 30th of August, did the battle of that day commence?

Answer. There was more or less skirmishing all the time. But the main battle commenced, I should think, about 12 o'clock; perhaps after that.

Question. Was the accused with his command, so far as he had it on that morning, in that battle?

Answer. A portion of his command was in the battle under his orders. His position in reference to them I did not myself know.

Question. Will you state what was the extent of his force in that battle, if you can?

Answer. I cannot state it exactly; but I can state, I suppose, something like it.

Question. State it approximately.

Answer. The brigade of Griffin and the brigade of Piatt were absent from the field, which I suppose reduced his force between 5,000 and 6,000 men; I presume, therefore, that he had in the battle not to exceed 7,000 men of his own corps with him on the ground. Perhaps he had not so many as that; but that is my estimate of the number. In addition to that he had, however, at that time, King's division operating with him, under his command.

Question. State, if you can, the number of his killed and wounded upon that occasion.

Answer. I have not received any report of the killed and wounded from him. But, a day or two ago, since my arrival here, there were lists of killed and wounded sent, I think, by Sykes and Morell, who commanded the divisions of his corps; I have not, however, yet examined them.

The accused here announced his examination closed.

Whereupon the court adjourned to 11 a. m. on Monday next.

WASHINGTON, D. C., *December* 8, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

The accused asked permission to further examine the witness, Major-General Pope, upon some points he had omitted on Saturday last. Permission was accordingly granted.

The examination of Maj. Gen. JOHN POPE was then resumed, as follows, by the accused:

Question. What is the distance between Gainesville and Jackson's right, as it stood at 4.30 p. m. of the 29th August?

Answer. I should think not to exceed 6 miles.

Question. At what hour, as reported by General Buford, did Longstreet pass through Gainesville on that day?

Answer. As I remember General Buford's dispatch—I have not seen it, or, rather, not read it since—I do not remember that he reported Longstreet to have passed through at all, but that he reported a certain portion of Longstreet's forces, which he designated to have passed through Gainesville, at what hour I do not now remember.

Question. How long time would it take for Longstreet's force, after leaving Gainesville, to reach that point of the road where the line of the march of the accused would strike the road from Manassas Junction to Gainesville?

Answer. That I cannot tell. As I understand, the road from Manassas Junction to Gainesville intersects the Warrenton turnpike east of Gainesville, perhaps a mile or two, though I have never myself been over the road.

Question. How long time would be required for the force of Longstreet, after leaving Gainesville, to reach the point where Jackson's right stood at 4.30 p. m. on that day?

Answer. Jackson's right, as I understood it to be, was about 5 or 6 miles east of Gainesville. I cannot tell how long it would take, because I do not know how fast Longstreet's troops marched. The court can judge of that as well as I can. I had not been over the road. It was a turnpike road, a macadamized road, worn in places east of that point where I passed over it. I had not myself been over it as far as Gainesville.

Question. Supposing, then, Longstreet's forces to have passed through Gainesville as early as 1 o'clock in the day, they would have had more than ample time to arrive on Jackson's right at 4.30 p. m.?

Answer. According to my opinion as to the capacity of troops for marching, they would have had more than time. But such is not my experience of the divisions of the army in Virginia.

Question. Is it not the general fact that the rebel army in Virginia, at this period of time, was understood usually to march with rapidity, and without much incumbrance in the way of trains or other causes?

Answer. I suppose that to be the popular belief. I do not know it to be the fact.

Question. At what time did the battle of the 29th of August begin,

during what period did it continue, and at what hour did it substantially cease?

Answer. The skirmishing commenced along the Warrenton turnpike quite early in the morning; the exact hour I cannot say, but it was, I should think, not very long after daylight that I first began to hear the guns. It continued, with more or less intermission, until some time after dark on the 29th—perhaps 8 o'clock. The precise hour, of course, I cannot designate.

Question. About what time did the infantry combat cease on that day?

Answer. The infantry combat was the last. The last firing, I think, was done by the infantry. There may, perhaps, have been artillery firing about the same time, but, if so, at long range.

Question. What did you understand the strength of Jackson in front of you to have been at 4.30 p. m. on that day?

Answer. Of course, in making a statement of that kind, I am only guided by the information, more or less uncertain and unreliable, which we had received at various times. I myself estimated his force to be about 25,000 men, or between that and 30,000; 25,000 was the lowest estimate I made of his force.

Question. Bearing in mind the terms and tenor of the order of 4.30 p. m. of the 29th of August, and its direction to the accused to attack the enemy's flank, and, if possible, his rear, and at the same time to keep up communication with General Reynolds on the right of the accused, please to inform the court whether, if it could have been foreseen at 4.30 p. m. that at the time when the accused should receive that order he would find himself in front of the enemy in large force, in such a position that he could not outflank the enemy without severing his connection with General Reynolds on his right, would you, if that state of facts had been foreseen at the date of the reception of the order, have expected or anticipated obedience from the accused to the order according to its terms?

The question was objected to by a member of the court as mere opinion.

The accused stated that the accused is charged with disobedience to the order in question. It is deemed by the accused most material for him to show that a state of facts existed at the time of his reception of the order such as to preclude a reasonable expectation on the part even of the officer who issued the order of its being executed by him at that time according to its terms. It is respectfully submitted by the accused that this is not opinion in regard to which the witness is asked as an expert. The question is supposed to have a substantial justice and equity in itself, as going to the justification of the accused in any failure to comply with the order which he may have exhibited.

But if there should be further and positive ruling or precedent of evidence desired by the court in order to warrant the admission of the question, the accused then respectfully submits that this witness has already been understood to testify that on the 2d of September, the witness then, having in view all these operations, did not regard the accused as guilty of purposed and intentional criminality and delinquency. Now, it is obvious that a negative answer to the question now submitted will be most important fortification of that opinion.

It should be added by the accused that the judge-advocate, with the sanction of the court, has repeatedly asked this witness, as the author of the order, whether he did or did not consider that certain action of the accused amounted to a disobedience of this order. We humbly conceive that precisely the same rule of examination would admit this question.

The member of the court (objecting) said, it is proper for the accused to show the facts, and then the court would determine what shall be their determination upon those facts. But upon that determination the opinion of this witness can have no bearing one way or the other.

The court was then cleared.

After some time the court was reopened; whereupon the judge advocate announced the decision of the court to be that the witness shall not answer the question propounded by the accused.

The accused then said: With the permission of the court, the accused will now propound the question in a different form, so as to present more exactly upon the record the principle of its exclusion.

The president of the court stated that the question referred to matters which could be made use of by the accused in his defense; but, under the ruling of the court, the question could not be propounded to this witness.

Examination continued by the ACCUSED:

Question. Will the witness inform the court how many interviews he had with the accused between the morning of the 27th of August and the morning of the 29th of August?

Answer. I saw the accused several times on the morning of the 27th of August, at Warrenton Junction. I also saw him on the 28th, when he came up at Bristoe Station. From that time until the morning of the 30th, I did not see him at all.

Question. Does the witness recollect the hour at which the accused acknowledged the receipt of the order of 8.50 p. m. of the 29th of August?

Answer. I do not remember to have received an acknowledgment at all of the reception of that order, except the acknowledgment made by the accused himself in appearing upon the field of battle the next morning.

The examination by the accused was here closed.

Examination resumed by the JUDGE-ADVOCATE:

Question. In referring to the conversation which you had with the accused at Fairfax Court-House, you stated in effect that you said to him, among the causes of complaint which you had against him, was that he was understood to have written a dispatch or letter to General Burnside, severely criticizing your campaign before he had had an opportunity of understanding it at all, and just as he was on the point of joining your command. Will you state precisely when he did join your command?

Answer. He joined my command at Warrenton Junction on the morning of the 27th of August. He had reported to me, I think, by note, before he came up to Warrenton Junction. I do not now remember from what point, but somewhere quite near. His command joined our forces and reported to me personally at Warrenton Junction on the morning of the 27th of August.

Question. He, with his command, had prior to that time belonged to the Army of the Potomac under General McClellan, had they not?

Answer. I so understood.

Question. From the morning of the 27th of August, when he joined your command, until the close of the military operations spoken of in the charges and specifications, and to which you have deposed, he was your subordinate officer and subject to your commands, was he not?

Answer. Yes, sir.

Question. In one of your answers to the questions of the accused, you stated that you received from General Porter a request to clear away

or open your end of the road. Can you state at what time you received that request?

Answer. I think I received the request once or twice. My impression is, twice. But I think in the note which he wrote me, and which I have spoken of, and which I received toward daylight on the morning of the 28th, he made that request. I think it was at that time that I first received it.

Question. Did I not understand you to say that that request was complied with?

Answer. Yes, sir. I sent several officers.

Question. Am I right in understanding you to have stated distinctly that the joint order to Generals McDowell and Porter given on the morning of the 29th was designed not to place the one in subordination to the other, but that they should operate independently of each other, each one in subordination to yourself?

Answer. I so intended.

The accused objected to the question and answer, as involving merely the opinion of the witness.

The judge-advocate stated that the question was put merely to make certain and definite what the witness had previously stated in answer to the questions of the accused.

That portion of the examination of the witness by the accused was then read.

Whereupon the accused withdrew his objection.

The examination by the judge-advocate was here closed.

Examination by the COURT:

Question. Do you know in what order the commands of Generals McDowell and Porter left Manassas Junction on the morning of the 29th August, in obedience to your joint order of that date?

Answer. I do not know from my own knowledge, but from the reports of others.

Question. Did they take the same road?

Answer. I know that in the same way—from the reports of others, but not from my own knowledge.

Question. What were the relative distances they had to march in order to engage the enemy?

Answer. I should suppose, without being certain of the fact, that they had about the same distance; that is, considering the distance General McDowell had to march from Manassas Junction to Groveton. I think, perhaps, General Porter's corps would not have had to march so far.

Question. Where was General Porter's corps at the time he addressed the note to Generals McDowell and King, of which you have testified?

Answer. I do not know. The note to Generals McDowell and King did not state. I can only give the same general answer that I have done before, that he was somewhere between Manassas Junction and Gainesville.

Question. Where was General Porter's corps on or about 6 o'clock p. m. of the 29th of August?

Answer. That also I cannot tell, except from the report of my aide-de-camp, who reported his position at about 5 o'clock. Whether he moved from that position or not was not reported to me, nor do I know.

Question. State the position he was in at about 5 o'clock, as reported to you.

Answer. He was at the forks of the road west of Manassas Junction; I mean the forks of the roads leading to Gainesville and Groveton; perhaps 2 miles west of Manassas Junction.

Question. Did, or did not, General Porter engage the enemy on the 29th of August; and, if not, was it or not in violation of your orders?

The latter part of the question was objected to by a member of the court.

The court was then cleared. After some time the court was reopened; whereupon the judge-advocate announced that the court had decided to put the question in this form:

Question. Did, or did not, General Porter engage the enemy on the 29th of August?

Answer. I do not know, of my own knowledge, that he did so. I think, if he had done so, I should have known it. Upon reflection, since I gave testimony here a day or two ago, I recollect a circumstance which then did not occur to me, and which I will state here: I heard two or three pieces of artillery—perhaps as many as three shots—I think, however, only two, fired toward the right of Jackson's line; I think, about 2 p. m. of the 29th of August. Whether the firing was done by the enemy or by some of our own people I did not then know, and I do not now know. If any considerable engagement had occurred in that direction, I think I could not have failed to have known it, as I was along the front of the line several times during the day, and certainly could have heard anything like a severe action occurring anywhere on the road from Manassas Junction to Gainesville.

Question. At what hour did General Porter put his forces in motion, on the morning of the 28th of August, in the direction of Bristoe Station?

Answer. I do not know, except from reports of others.

Question. At what time, on the morning of the 29th, was the joint order to Generals McDowell and Porter given?

Answer. I have endeavored, in my previous testimony, to state it as nearly as I can recollect. My remembrance then was that it was between 8 and 9 o'clock. It may, perhaps, have been somewhat later, though not much.

Question. You mentioned that in going from Warrenton Junction, toward Bristoe Station, on the morning of the 27th of August, you saw many stragglers of Hooker's command on the railroad; were they or not in sufficient numbers to have impeded the march of infantry along the track?

Answer. Shortly after I started east from Warrenton Junction, we came upon the railroad again just east of Cedar Run, and from that time until we reached Bristoe Station the road was lined with stragglers from Hooker's division. Those stragglers commenced singly; then two or three together; then half a dozen, until we had got 3 or 4 or 5 miles from Warrenton Junction, toward the east, when they began to be in bodies of 40 and 50 and 100 together, marching along the railroad track. I should think I saw not less than 1,500 men on the railroad, going eastward, between Warrenton Junction and Bristoe Station. I think the most of them had gotten up to their command at Bristoe Station during the night, though I continued to see small bodies of them coming along the railroad track on the morning of the 28th of August. They occupied the whole track during the day of the 27th, as we were going eastward; but all of them, or the larger portion of them, got to Bristoe Station during the night of the 27th of August.

Question. Were there, to your knowledge, any openings in the track, such as to have made it dangerous for infantry to march along said track at night?

Answer. Along the road, between Warrenton Junction to Kettle Run, which is, perhaps, 3 miles west from Bristoe Station, the track had been torn up in places; but during the day of the 27th of August I directed Captain Merrill, of the engineers, with a considerable force, to repair the track up to the bridge over Kettle Run, which had been burned. He reported to me, on the night of the 27th, that he had done so; so that from Warrenton Junction to the bridge over Kettle Run there was no obstruction on the railroad of any description. The bridge at Kettle Run had been burned; but a hundred yards above the bridge the road crossed the creek by a ford, and from there toward Bristoe the most of the country—in fact, nearly the whole of it—was open country; that is, as I remember the country, riding along in the afternoon of the 27th of August.

Question. What was the strength of your whole command in front of Jackson, independent of General Porter's corps, on the 29th of August?

Answer. I cannot tell with exactness, since, in the active operations, where we were fighting almost every day, I had received no reports of casualties, either in killed, wounded, or stragglers. I can give, I suppose, something like an approximation to it. I think that until half-past 5 in the afternoon of the 29th, when McDowell's command arrived on the field, our whole force amounted to about 24,000 or 25,000 men, independently of McDowell's and Porter's corps; that may be an overestimate; probably is an overestimate, from the fact which I have stated, that I did not have any reports of casualties, either in killed, wounded, or stragglers, and the stragglers formed an exceedingly large part of those absent from every action.

Question. You have given an estimate of the force of Jackson; did you include in that estimate the force of Longstreet?

Answer. I did not.

Question. What was the strength of McDowell's corps on the 29th of August?

Answer. As with the others, I had received no reports from McDowell's corps; I estimated, however, the fighting force that McDowell brought on the field at about 12,000 men. It may have exceeded that, or it may have been less; that is a mere estimate in the absence of any reports of casualties or stragglers from that corps for two weeks previous, during which time we had been almost constantly marching and fighting the enemy, and during which period there was no time to make out returns.

Question. Can you give an estimate of the force of Longstreet at that time?

Answer. There were various accounts of Longstreet's forces. According to my own belief, derived from these various sources of information, I think Longstreet had, perhaps, 17,000 men—from that up to 20,000—though, of course, such estimate is not very reliable.

The examination of this witness was here closed.

Capt. DRAKE DEKAY was then called by the Government, sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state what position you hold in the military service?

Answer. First lieutenant of the Fourteenth Infantry.

Question. What position did you hold during the campaign of the Army of Virginia, under the command of General Pope?

Answer. Aide-de-camp to General Pope.

Question. Did you, or not, on the 27th of August last, bear a written order from Major-General Pope to Major-General Porter, who was then, I believe, at Warrenton Junction?

Answer. I did.

Question. Do you remember distinctly the character of that order, and would you be able to recognize it again upon having it read to you?

Answer. I did not read it.

Question. Did you, or not, after its delivery to General Porter, learn from him its character?

Answer. I was aware of its character by word of mouth, either from General Pope or from his chief of staff.

Question. Will you state its character as you understood it?

Answer. That he was to proceed at 1 o'clock that night to move up to Bristoe Station with his command.

Question. Do you mean at 1 o'clock on the morning of the 28th of August?

Answer. Yes, sir.

Question. At what hour of the 27th of August did you deliver this order to General Porter?

Answer. Between 9 o'clock and half-past 9 p. m.; I think about half-past 9; I could not say within a half an hour.

Question. Had you any conversation with General Porter at the time in relation to the order or the execution of the order by him?

Answer. Yes, sir; some conversation.

Question. Will you please state it, as far as you can recall it?

Answer. I arrived, as I have said, about half-past 9 o'clock, at his tent, and found General Porter and two or three generals there—General Sykes and General Morell, and, I think, General Butterfield, though I am not sure whether he came in afterward or not. I handed General Porter the order, which he read, and then handed to one of the generals, saying as he did so, "Gentlemen, there is something for you to sleep upon." I then said that the last thing that General Pope said to me on leaving Bristoe Station was, that I should remain with General Porter and guide the column to Bristoe Station, leaving at 1 o'clock, and that General Pope expected him certainly to be there by daylight or relied upon his being there by daylight; something of that nature; those may not be the exact words; I only give to the best of my recollection, of course. General Porter then asked me how the road was. I told him that the road was good, though I had had difficulty in getting down on horseback, owing to the number of wagons in the road; but I told him I had passed the last wagon a little beyond Catlett's Station from this direction. I told him that as they were moving slowly, he would probably be up with them by daylight. I also stated to him that his infantry could take the railroad track, as many small squads of men had gone up that way. These small squads, I would state here, though I did not state that to General Porter, were stragglers from Hooker's corps; I should think some 600 or 800 of them, which we passed in going down to Bristoe Station; they all took the railroad track as the shortest and easiest road.

Question. What remark, if any, did General Porter make, either to you or to the generals with him, in reply to this statement in reference to the road and the expectation of General Pope?

Answer. He stated—I do not think to me—he spoke generally to all who were in the tent—that his troops had just got into camp; that they had been marched hard that day; that they would be good for nothing if they were started at that time of night; that, if their rest was broken, they would be good for nothing in the morning on coming up with the enemy.

Question. Did you, or not, make known to him that you were there for the purpose of conducting him under the order of General Pope?

Answer. I did.

Question. Did he, or not, at the moment, announce any purpose either to obey the order or not to do so?

Answer. I do not recollect precisely.

Question. From the remarks made by General Porter, in your hearing, in reply to these statements of yours, was or was not the impression made upon your mind that it was not his purpose to march in obedience to the order?

Question objected to by the accused.

The judge-advocate stated that he merely wished to arrive at the fact whether there was any determination made known to the witness in regard to this order in any way; he was not particular as to the form of the question to be asked.

The accused withdrew his objection.

Answer. There was no order issued to my knowledge, of course, one way or the

other. That would have been done through General Porter's assistant adjutant-general. I can only say that I was aware of the determination not to start until daylight, inasmuch as I laid down and went to sleep.

Question. Do I or do I not understand you, then, to say that there was an evident determination on the part of General Porter not to march until daylight?

Answer. There was.

Question. Have you any knowledge as to the time at which his troops had arrived at Warrenton Junction?

Answer. Only the fact that the regulars—Sykes' division—were in camp at Warrenton Junction at about 10 o'clock in the morning of that day, which fact I am aware of from having visited several officers of my regiment in their camp.

Question. These regulars were a portion of General Porter's command, were they not?

Answer. Yes, sir.

Question. Have you any knowledge how far the troops under General Porter had marched on that day?

Answer. I have not.

Question. What was the character of the night of the 27th of August?

Answer. To the best of my recollection, it was a cloudy night, but not rainy.

Question. What was about the distance between Warrenton Junction and Bristoe Station?

Answer. I supposed it to be 10 miles; they say 9 miles.

Question. What was the distance from Bristoe Station to Catlett's Station, where you passed the last of the wagons?

Answer. I cannot tell you exactly; 6 miles, I should think.

Question. At what hour did you pass the last of those wagons?

Answer. Half-past 8 p. m., I should think.

Question. Did you remain over night and wait until the march of General Porter's command the next day?

Answer. I did.

Question. At what hour, in point of fact, did he move from Warrenton Junction?

Answer. I should think the head of the column left about 4 o'clock in the morning; I am not positive about the hour.

Question. At what rate did the command march after it left Warrenton Junction?

Answer. I could not say at what rate. We started at or about 4 o'clock in the morning, and marched along quietly, without any apparent haste, meeting with no obstruction or detention, except that arising from the wagons we found in the road. The head of the column arrived at Bristoe Station about 10 o'clock, I should judge.

Question. At what point did you overtake the wagons, and how many of them do you suppose there were?

Answer. I do not recollect. There was a large park of wagons near Warrenton Junction—about half-way between Catlett's Station and Warrenton Junction—which left for Bristoe Station at daylight. We overtook those wagons. They were in park when I passed down to Warrenton Junction the previous evening; therefore I cannot tell when we overtook the end of the train which I had passed near Catlett's Station the evening before.

Question. What is the meaning of the term "in park?"

Answer. In camp.

Question. Had General Porter's command marched at 1 o'clock in the morning, would he, or would he not, have passed those wagons in camp?

Answer. He would have passed them in camp, probably.

Question. Was, or was not, the march throughout at the usual rate at which troops move, or was it slower?

Answer. It was at the rate at which troops would move if there was no necessity for rapid movement.

Question. Could they, or could they not, in your judgment, have moved much faster than they did in point of fact?

Answer. They could.

Question. Did you see General Porter during the march?

Answer. I accompanied him after the first 3 miles. He came up to the head of the column about a quarter of a mile this side of Catlett's Station.

Question. Did, or did not, General Porter or any of the officers under him, during the march, make any unusual personal exertions to accelerate the march of the troops?

Answer. In drawing the wagons off the road, to enable the troops to pass, at one or two points, General Porter and also his staff used great exertions.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Will the witness please to state what his going to sleep, or retiring to rest, at half-past 9 o'clock, had to do with the question of the determination of General Porter to start or not to start at 1 o'clock in the morning?

Answer. I have not stated that it was half-past 9 when I went to sleep.

Question. Or 10 o'clock.

Answer. Nor 10 nor 11 o'clock. I should judge, however, that it was about 11 o'clock when I laid down.

Question. We understood it to be immediately after the conversation.

Answer. Very soon after the conversation. Had it not been the intention of the general not to move until daylight, I should not have lain down.

Question. Did you hear all the conversation that took place between General Porter and the generals who were with him, at the time of your arrival, touching his determination when to start?

Answer. I am not aware that I heard all of it, neither do I remember the conversation—merely the impression derived from it.

Question. Try and recollect whether you heard anything said of the determination to start as early as 3 o'clock.

Answer. I think that "daylight" was the expression used; not any hour.

Question. At what time did you hear the reveille?

Answer. I did not hear it. I was awakened, I think, by the servant of General Porter, in whose tent I was sleeping.

Question. Was it a dark night when you went to sleep, retired to rest?

Answer. Darker than when I was on the road?

Question. No, sir; was the night dark?

Answer. I think it was a cloudy night, but not dark.

Question. Was there a moon that night?

Answer. I do not think so, at any time that I was up

Question. Was it a starlight night?

Answer. I think not.

Question. Was it still dark when you were aroused from your slumbers in the morning?

Answer. I think it was just at dawn.

Question. We mean to inquire whether the darkness of the night still continued so as to be at that time a serious impediment to the movement of troops?

Answer. I cannot say. When I was awakened up, it was, I think, just at dawn, the day just breaking. I was invited to breakfast. Whether at that time we used candles, or whether it was light enough to take breakfast without, I do not remember.

Question. Having passed at about half-past 8 o'clock, at or near Catlett's Station, the last of the train of wagons proceeding from Warrenton Junction to Bristoe Station, why did you conclude that if General Porter got under way at 1 o'clock, that is, nearly five hours thereafter, he would still overtake those wagons with his troops before daybreak? Were they necessarily proceeding so slowly as that?

Answer. Wagons always proceed slowly where they are in large numbers.

Question. You spoke of a park of wagons near Warrenton Junction. Was that park vacant when General Porter's column passed it on the way to Bristoe Station?

Answer. I think that it was. I think there were wagons still there; but the main body of the train had left.

Question. Those wagons, then, which had left the park were proceeding toward Bristoe Station?

Answer. They were.

Question. We understand the rate at which those wagons were moving, from what the witness has said in regard to the usual rate in reference to the preceding line of wagons. They were moving very slowly?

Answer. Moving at the same rate as the others.

Question. Would not that, then, have constituted a serious obstacle to a rapid advance of troops by that road?

Answer. No, sir.

Question. Referring to what you have stated, of the great exertions of General Porter and his staff after daybreak to get the wagons out of the way of the advancing column, do we understand you now to testify that these last wagons of which you speak, being in front of the advancing column, would not constitute an obstacle to its movement?

Answer. As a train of wagons they would not constitute a great obstacle—an obstacle to some degree, of course. I did not state that General Porter used great exertions throughout the march. I said that he did at one or two points; at one or two points where the wagons had been stalled, or a number of them jammed up.

Question. Would not the presence of wagons on a road during a dark, moonless, and starless night have constituted a most serious impediment to the rapid advance of troops, either infantry or artillery?

Answer. I do not consider that that night was a dark night. I have stated that it was a cloudy night, that is, the moon, if there was a moon, was clouded over. The sky was cloudy; but it was not a dark night.

Examination by the accused here closed.

Examination by the COURT:

Question. Were you awake so as to speak of the character of the night after 11 o'clock and before you arose in the morning?

Answer. No, sir.

Question. Do you know how often the column halted in the march and how long those halts were?

Answer. No, sir.

Question. How long a time elapsed from the time the head of the column started from Warrenton Junction till the head of the column arrived at Bristoe Station?

Answer. I should judge from five to six hours. I cannot say positively.

Question. Was the column closed up, or can you say whether the mass of the troops of the column, substantially, arrived at Bristoe at that time?

Answer. I cannot say; I acted as guide of the troops, and was at the head of the column all the time. The road runs through the woods a part of the way, and part of the way through an undulating country of small hills and valleys, so that I could not tell whether the troops were closed up or not.

Question. Did any portion of the infantry march along the railroad track?

Answer. I think not. I am not aware that they did. Occasionally, in crossing runs, they would take the railroad track to avoid getting wet.

Question. Did the artillery march with the column?

Answer. I presume in the rear of the column. I do not know.

The examination of this witness here closed.

Whereupon the court adjourned to 11 a. m. to-morrow.

WASHINGTON, D. C., *December* 9, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The minutes of the last session were then read and approved.

Brig. Gen. B. S. ROBERTS was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state to the court what is your present rank, and what your duties in the Army of the United States?

Answer. I hold the rank of major in a regiment of cavalry in the Army of the United States, a brevet lieutenant-colonelcy in the Army, and the rank of brigadier-general of volunteers in the volunteer service.

Question. Will you state whether or not you accompanied General Pope's army in its late campaign in Virginia; and, if so, in what capacity?

Answer. I accompanied that army first as chief of its cavalry; afterward as its inspector-general.

Question. Did, or did not, your duties bring you near the person of General Pope, and make you familiar with his plans of operations and his orders?

Answer. As chief of cavalry, I had quarters and was near the person of General Pope. As his inspector-general, I was near his person at his headquarters, and made very familiar with his plans and his operations.

Question. What knowledge, if any, have you of an order issued by Major-General Pope, on the 27th of August last, to Major General Porter, in reference to his movements?

Answer. I was with General Pope at Warrenton Junction on the night of the 26th and the morning of the 27th of August, until he left that station, which, I think, was a little after noon, nearer 1 o'clock than 12 o'clock, perhaps. I proceeded from that place with him, along the railroad in the direction of Manassas Junction, so far as a place, I think, called Bristoe Station. At that place General Pope dictated an order in my presence, and sent that order by an officer of his staff to General Porter. My recollection is that Captain DeKay was the officer who carried the order; and I think he left about dark—I should think half-past 6 or 7 o'clock. The order was written about sundown; and the hour at that season of the year was, I should think, about half-past 5—between that and 6 o'clock.

Question. State what was the character of that order.

The accused admitted the order referred to by witness to be the same as the one set forth in specification first of charge first.

Question. Were you present at Warrenton Junction on the morning of the 27th of August, when General Porter with his command arrived there?

Answer. I was.

Question. At what hour did they arrive?

Answer. I rode to Warrenton Junction from General Pope's headquarters, I think, between 9 and 10 o'clock in the morning. A part of General Porter's command had already arrived there; but what portion of it I do not know. I saw General Porter the first time with General Pope at Warrenton Junction, I think about 10 o'clock in the morning, perhaps later.

Question. Did you see General Porter's troops there—many of them?

Answer. I saw that division of his corps commanded by General Sykes and a great many of its officers before noon of that day; and about noon I met General Morell, and I understood at the time that General Morell had arrived with the rear division.

Question. What seemed to be the condition of those troops? I mean so far as their ability to march was concerned.

Answer. I paid no particular attention to their condition. General Morell himself was very much fatigued and quite sick. I remained with him a long time in a tent, and had a very long talk with him; I should think between 12 and 1 o'clock; and that conversation related to the condition of his troops, which I understood to be a good condition. I do not know the distance that his troops were marched that day, but they were to be left there for the purpose of rest, and were left there for that purpose.

Question. Do you mean that they were not ordered to join the march with General Porter's command?

Answer. No, sir; General Porter's command, all of it, was left at Warrenton Junction on the 27th of August. When General Pope left, he did not know that General Morell had arrived; and in writing a dispatch in which he said to General Porter that if General Morell had not arrived, he was to give him certain instructions on arriving, I informed General Pope that General Morell had arrived before I left.

Question. What dispatch do you speak of now?

Answer. The same dispatch as set forth in specification first of charge first.

Question. Were you at Bristoe Station when General Porter's command arrived on the following day?

Answer. I do not recollect that I saw any of General Porter's corps arrive at Bristoe Station before I left; I saw troops arriving from that direction.

Question. Will you state to the court the condition of the road between Warrenton Junction and Bristoe Station, over which this order required General Porter and his command to march?

Answer. The condition of the road was good, generally. The first 3 or 4 miles of the road passed through open country, some woods intersecting it. Some bridges had been burned, and the passing of the streams were the only difficulties I now remember, and they were not material, a large number of wagons having passed them without any difficulty, as General Pope himself moved down, following him.

Question. State what you know, if anything, in regard to any order or orders issued by Major-General Pope to General Porter on the 29th of August, in reference to his movements.

Answer. On the morning of the 29th, an order was directed to General McDowell and General Porter, severally, requiring them to move their forces from Manassas Junction in the direction of Gainesville, and to continue on the road leading from Manassas Junction toward Gainesville to a point which I inferred to be near Gainesville, but I do not know how near, and there they were to halt their commands.

The judge-advocate stated the order referred to by witness was the joint order set forth in specification second of the first charge.

The witness continued:

In this order I remember they were instructed not to proceed so far as to be unable, in case of necessity, to fall back behind Bull Run that night. This order gave to these generals a discretion of departing from its strict letter, if any great advantages were to be derived from such a departure; but pressed upon them the importance of keeping in a position where they could fall back behind Bull Run that night, as it was believed by General Pope that they would be obliged to do so to get back to rations and supplies.

Question. Is the order set forth in specification two of charge one the order to which you are now referring?

Answer. That is the order I am now referring to.

Question. What do you know, if anything, in regard to the order issued by General Pope to General Porter, set forth in the third specification of the first charge, bearing date 4.30 p. m. of the 29th August?

Answer. About 4.30 p. m. of the 29th of August it was supposed by General Pope that General Porter was near the field of battle. The direction in which the first order required him to move would have brought him, as was supposed, near the field of battle before that hour; and I had noticed, in the direction where I knew General Porter was expected, the flash and the smoke from some pieces of artillery, and I inferred it to be artillery from General Porter, who was expected to attack there about that time. But it very soon ceased, and General Pope then wrote another order to General Porter, which, according to my recollection, stated that the direction of his movement would bring him on the enemy's right flank or rear, and that he wished him to press forward and attack immediately.

Question. Is, or is not, the order to which you now refer the one set forth in the third specification of the first charge?

Answer. That is the order to which I refer.

Question. Will you state what you know, if anything, in regard to General Porter's having either obeyed or disobeyed those orders?

Answer. I know that General Porter did not attack, as he was directed to attack in that order. I was on that part of the field several times, and was expecting every minute that the attack would be made, and was watching for it with a great deal of anxiety, but it was not made.

Question. Did you continue upon the field until the engagement closed?

Answer. I was on the field all day, and remained on the field all that night.

Question. What were the results of the battle when the night closed in?

Answer. General Pope's troops, when night closed in, occupied quite a portion of the field from which the enemy had been driven, and, in my opinion, although the battle was not a decisive one, the advantages of the day were in favor of General Pope's army.

Question. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the result upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?

The accused objected to the question.

The court was thereupon cleared.

Some time after the court was reopened, and the judge-advocate announced that the court determine that the question shall be answered.

The question was again propounded the witness as follows:

Question. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the result upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?

Answer. I do not doubt at all that it would have resulted in the defeat, if not in the capture, of the main army of the Confederates that were on the field at that time.

Question. What do you know, if anything, in regard to the order set forth in the fourth specification of the first charge, addressed by Major-General Pope to the accused, which was as follows:

HEADQUARTERS ARMY OF VIRGINIA,
In the Field, near Bull Run, August 29, 1862—8.50 p. m.

Maj. Gen. F. J. PORTER:

GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

Answer. I know that that order was dispatched to General Porter by an aide-de-camp or a staff officer of General Pope at about 8½ o'clock in the evening of Friday, the 29th of August. I know that General Porter in person reported to General Pope on the field in obedience to that order, and that a part of his command was brought onto the field on the morning of the 30th.

Question. Do you know what part of his command he failed to bring upon the field under this order?

Answer. I do not know, of my own knowledge, what part of his command he failed to bring onto the field. I know that there were parts of his command that I did not see on the field during that day—the 30th August.

Question. Have you at any time had any conversation with the accused in regard to these orders?

Answer. I have not.

Question. Have you had any in regard to the military operations which were then in progress under General Pope, about the date of these orders?

Answer. I have not, according to my recollection.

The examination by the judge-advocate here closed.

Your Success Matters.

Examination by the ACCUSED:

Question. Will the witness state at about what hour the battle of the 29th of August ceased?

Answer. It was some time after dark; I should think quite as late as half-past 7 or 8 o'clock.

Question. Does the witness know at what hour General Porter, on the 29th of August, received the order bearing date of 4.30 p. m. of that day?

Answer. I do not know.

Question. The witness having spoken of his expectation of an attack to be made upon the enemy by General Porter, are we to understand that he expected such an attack to be made prior to the issue of the order of 4.30 p. m. August 29?

Answer. Yes, sir; that is what I intend the court and the accused to understand, and for the reason that I had supposed that any general within hearing of an important battle, in whose power it was to engage in it, would do so; and I had supposed that General Porter's line of march from Manassas Junction would have brought him onto the right of the enemy's lines before 4 o'clock, and I had supposed that he would attack on coming onto those lines.

Question. Under what order was General Porter acting on the 29th of August, prior to the issue of the order of 4.30 p. m. of that day?

Answer. I do not know that he was acting under any special order; but I supposed that the order that directed him to move in that direction was sufficient authority for General Porter to engage in the action.

Question. Having described various specifications in that joint order in your testimony-in-chief, no mention has been made of any specification directing an attack, but, on the contrary, of a specification directing a halt, and a halt in such a position as to reach Bull Run that night; that joint order you consider to have been in force up to the time when the order of 4.30 p. m. was issued?

Answer. There was a discretion in that order which, in my estimation, would have authorized General Porter to have joined, at any time during the fight of the afternoon of the 29th, in that fight when he could have done it to advantage. And, in my estimation, any general has the discretion, in the nature of things, when an important action is going on, to join in it, and is bound to do it.

Question. Did not the joint order specially exclude from the discretion of Generals Porter and McDowell the necessity of their remaining in such position as to enable them to fall back behind Bull Run?

This question was objected to by a member of the court.

The court was thereupon cleared.

After some time the court was reopened, and the judge-advocate announced that the court determine that the question shall not be answered.

Examination continued by the ACCUSED:

Question. If there was no discretion left the accused by the joint order of the 29th of August, would it have been his duty to have joined in the battle, if by doing so he would have violated that joint order?

This question was objected to by a member of the court.

The question was waived by the accused.

Question. It being, in the judgment of the witness, the plain duty of General Porter to have attacked prior to the reception of the order of 4.30 p. m. of the 29th of August, what explanation does the witness give of the fact that the order of 4.30 p. m. prescribed a single specified form of attack, with the positive condition that the attack should be made in

such manner as not to sever connection with General Reynolds on the right?

Answer. As I understood the relation of General Reynolds with the Pennsylvania Reserves to the enemy's right, General Porter's having attacked the right of the enemy, would have brought him in closer connection with Reynolds' left.

Question. Will the witness inform the court whether, at any time in the course of the day of the 29th of August, he saw the command of the accused and the enemy in such a position as to make an attack by General Porter upon the flank or rear of the enemy possible?

Answer. I did not see General Porter's command on the field on Friday, the 29th of August. But I suppose that I know nearly the position where General Porter's command was between 4 and 5 o'clock, and I supposed that I had seen smoke from guns of his command. I know the direction of the road from Manassas Junction to the field of battle, and, in my opinion, General Porter was in a position where he could have moved forward and have attacked the right of the enemy; and I also believe that he could have turned the enemy's right flank and attacked their rear, from what I know of their relative positions and from what I know of the country.

Question. Between 4 and 5 o'clock p. m. of the 29th of August, did the witness know whether or not Longstreet's forces, in whole or in part, had made junction with Jackson, on Jackson's right?

Answer. I did not know; but I had reason to believe that they had not made junction, as I had been requested by General Pope, before going on to the field, while at Centreville in the morning, to take a position, and with a glass to observe whether troops were moving from the direction of Thoroughfare Gap to Gainesville; and having closely observed that country for a long time, I became convinced from the clouds of dust that arose above the Bull Run range beyond Thoroughfare Gap, toward a gap north of Thoroughfare Gap, the name of which I now forget, that Longstreet was moving very rapidly to get through that northern gap and to re-enforce Jackson. But, from the distance from the head of the column of dust to Gainesville, I did not believe that he would be able to effect a junction before late in the evening, and so reported to General Pope.

Question. Such having been the opinion of the witness during the day of the 29th of August, will he please state whether up to the present time he has become satisfied that Longstreet's forces, in whole or in part, did effect such junction with Jackson's right in the afternoon—say between 5 and 6 o'clock, or before that time—on the 29th of August?

Answer. I am convinced, by information that I have received since that day, that a part of Longstreet's forces effected a junction with Jackson in the evening of the 29th—I think about dark.

Question. About what hour in the day?

Answer. I should think about half-past 6 or 7 o'clock.

Question. Please to state your judgment as to the number of troops of Longstreet thus effecting a junction.

Answer. As I understand, about seventeen battalions.

Question. Numbering, in all, about how many men?

Answer. Between 4,000 and 5,000 men.

Question. From what you know of the position of General Porter's command and of Jackson's right, would that junction of Longstreet's troops bring the enemy in front of General Porter's force?

Answer. If General Porter's force was on the road leading from Manassas Junction to Gainesville, where I supposed it was, and they had moved toward the right of Jackson's forces, it would have brought him upon the leading column of Longstreet's forces that came in.

Question. In front of that column?

Answer. They would have met each other coming in opposite directions on the same road.

Question. Would it not, then, in that state of facts, have been materially impossible for General Porter to have outflanked and attacked the enemy, and at the same time to have kept up his connection with Reynolds on his right?

Answer. I can give merely an opinion on that subject.

Question. I ask the fact as it would appear from the dispositions of the forces there.

Answer. My opinion is, that the fact that the accused has stated would not have been impossible; but that General Porter's force was sufficient to have defeated Longstreet's, and to have attacked the right of Jackson's forces, and to have turned their rear.

Question. From your knowledge of the position of the troops of the enemy and of General Porter's command, will you state what distance General Porter must have marched to have made such an attack on the right flank of the enemy?

Answer. If General Porter's troops were in the position where I saw the flash of cannon and the smoke on the road between Gainesville and Manassas Junction, he could have reached the right of the enemy and turned its rear in less than one hour, in my judgment.

Question. At half-past 6 or 7 o'clock p. m. on that day, at the time when the witness supposes the junction by Longstreet's forces to have been effected, was it not becoming dark?

Answer. It was.

Question. During the hour's march necessary to effect an attack in flank, the darkness, of course, would have increased; would such a march and such an attack at that hour and in such darkness as would then prevail have been possible?

Answer. The accused makes a supposition which is not founded upon any fact which I have stated, and I cannot properly answer the question without a better understanding of its meaning.

Question. Please point out the supposition made in the question which you refer to.

Answer. I have been supposing that at 5 o'clock, by which time I supposed this last order had reached General Porter, that he was within an hour's march of the enemy's right flank, which would have brought him on that flank by 6 o'clock, and it would not then have been too dark to have made the attack.

Question. Have we not understood the witness correctly in understanding him to say that he did not know at what hour the order of 4.30 p. m. reached General Porter?

Answer. I do not know, except by information. I meant to say that I did not know the fact; but, from information, I believe it to have reached him before 5 o'clock.

Question. Was the witness present with General Pope when General Pope issued the order of 4.30 p. m. of the 29th of August?

Answer. I was present with him when the order was issued.

Question. Was the witness then of the opinion that that order could reach General Porter in a half an hour after it was written?

Answer. It could have reached him in less than that time as orders are generally carried on such occasions.

Question. Does the witness know the fact that at about 5 o'clock on that day a messenger, and aide-de-camp, I think, from General Porter, came to General Pope to ask for orders?

Answer. I do not.

Question. Does the witness know whether, on the 29th of August, it was a leading part of General Pope's plan of operations to fall back behind Bull Run, or immediately before that day, on the 27th or 28th?

A member of the court stated that General Pope himself, when on the stand, would have been the best witness of whom to have asked that question.

The accused stated that he would waive the question.

Question. Did it occur that the witness at any time, on or about the 27th, 28th, or 29th of August, made statements to General Pope touching the probability that General Porter would fail him, or touching the fidelity of General Porter to his duty as an officer?

Answer. After General Porter failed to march at 1 o'clock on the morning of the 28th of August, in compliance with General Pope's orders, it occurred to me that General Porter might fail General Pope, for the reason that I had never conceived that an officer who failed to obey so plain an order would do his duty. And when General Porter failed to attack on Friday, the 29th, when I expected he would attack, and when I know General Pope expected he would attack, that impression of mine was made still stronger that he would not do his duty. I may have suggested to General Pope my impression that he better not rely on General Porter; but I do not now recollect that I did state that to him.

Question. Is it true, in any event, that prior to the action taken by General Porter under the order of the 27th of August, the witness made any such statements touching the fidelity of General Porter to General Pope?

Answer. I made none prior to that time, and prior to that time I had felt convinced that General Porter would not only do his duty, but I was of the impression that he would do it as well as any officer in the army could do it.

Question. Then the grounds, and all the grounds, of any such unfavorable suggestions made by the witness, if any were made, are simply the judgment formed by the witness of the events with which General Porter was connected on the 27th and on the 29th of August?

Answer. They were not the only grounds, as, on the 28th, while at Manassas Junction, an officer of the army, a major-general, whose name it is not necessary for me to mention, in a conversation that I had with him, in which I mentioned General Porter and the high estimation in which I had held him, told me that I did not know him, and told me that he would fail General Pope. The disobedience of the orders, and this conversation, led me up to the opinion that General Porter was not doing his duty in good faith to General Pope.

Question. Had you heard such unfavorable surmise or report concerning General Porter prior to the 28th of August?

Answer. I had not.

Question. Did you on that day hear it from any other person than the major-general to whom you have referred?

Answer. I do not remember that I did.

Question. We must ask you, then, to give us the name of this major-general with whom you had this conversation.

Answer. It was Maj. Gen. Philip Kearny.

Question. Was any one present at that conversation between yourself and General Kearny, or during any part of it?

Answer. There were several officers in the vicinity; but General Kearny and myself were withdrawn, I think, at the time, some little distance from the other officers.

Question. Do you suppose the conversation to have been loud enough to have been within the hearing of any one of the other officers?

Answer. It is possible that it was.

Question. Can you tell us who those officers were, as nearly as you can recollect?

Answer. General Pope was near by, and several officers of his staff.

Question. Try and recollect the names of any you can recollect.

Answer. I do not know as I can mention any names. There were five or six officers of his staff with him.

Question. You know, of course, who were the officers of his staff?

Answer. Yes, sir.

Question. Who were they, at that time?

Answer. Colonel Ruggles was chief of his staff officers.

Question. State the names of such officers of the staff as, from their avocations and positions on the staff, would have been likely to have been with General Pope at that time.

Answer. Colonel Ruggles, I think, was with General Pope at the time, and Capt. Douglass Pope, I think, and Colonel Morgan and Colonel Welch; from their avocations they would have been most likely to have been there at that time. Several of the staff officers were absent—had been sent off.

Question. Were you up and awake and observant of the character of the night between the 27th and 28th of August?

Answer. I was up repeatedly on that night, and observed the character of it.

Question. Was there a moon that night?

Answer. My recollection is that there was no moon.

Question. Was it a cloudy or rainy, dark night?

Answer. It was cloudy at times, so as to be quite dark, and threatened, about 12 o'clock, to rain, so that I got up from where I was sleeping on the ground, found my wagon, and got into it, believing that it would rain.

Question. At that hour of the night how far could you distinguish in the darkness, without artificial light, the figure of a man, or of two or three men, or of a squad of men together?

Answer. My recollection is that I noticed, indistinctly, persons moving about in the night at very nearly 30 yards—perhaps at greater distances.

Question. Was it a night in which you could see the road plainly as you rode along at the hour you speak of, between 12 and 1 o'clock?

Answer. There is a special reason why I cannot answer that question, which is, that our camp was illuminated from the burning of the houses and cars at Manassas. During the most of the night, our camp was quite light from the flames, that continued all the night at Manassas, so that I cannot judge well whether I could have seen the road or not. I have only an impression upon that subject.

The examination by the accused here closed.

Examination resumed by the JUDGE-ADVOCATE:

Question. Do you, or not, undertake to state, positively, that the conversation between yourself and General Kearny could have been heard by any of the officers to whom you have referred?

Answer. I do not think it was heard, and I do not think General Kearny intended it to be heard. He was an old particular friend of mine, that I had served with a great many years, and was telling me of matters that had occurred down on the Peninsula, and giving me his opinion of officers there; and we had withdrawn from the others present.

Examination by the COURT:

Question. Where was General Porter's command about 6 p. m. on the 29th of August?

Answer. I do not know, but I think it was marching to Manassas, from the fact that I saw a note from General Porter, stating that he should fall back to Manassas, and I suppose now that he was then falling back. I saw the note about 8 o'clock on the evening of the 29th of August.

Question. At what time did General Porter receive the joint order set forth in the second specification of the first charge?

Answer. I only know from the report of the person who carried it.

Question. Will you mention the name of that person?

Answer. I think it was Dr. Abbott, assistant surgeon.

Question. What was the character of the night of the 29th of August, and at what hour did the battle of that day actually close?

Answer. The main battle of the day of the 29th of August closed soon after sundown. But later, I think as late as 7 o'clock, a division of General McDowell's corps had been pushed forward considerably in front of the center, and that division was attacked by the enemy's forces, and that part of the engagement I think, lasted until about 8 o'clock in the night. That is my recollection. The night was not dark—not as dark as the night of the 28th, according to my recollection. I was up repeatedly during the night.

Question. So far as you know, did, or did not, any portion of General Porter's corps take part in the action of the 29th of August?

Answer. I know that no part of his corps did take part in the action of the 29th on the field proper of Manassas, but I believe, from information, that a brigade of his corps commenced an action on the 29th, but on the Manassas Junction and Gainesville road.

Question. Will you state what brigade that was?

Answer. General Butterfield's brigade, as I have been informed.

Question. Do you know what was the position of General Porter's corps during the night of the 29th of August?

Answer. I do not know.

Question. Do you know at what hour of the morning of the 30th of August General Porter's troops came upon the field of the battle of the previous day?

Answer. I did not see his troops come onto the field. The first that I saw of him and his command on the field was when I carried an order to him, which was between 12 and 1 o'clock in the day, as I remember, when he was moving to the front of the center to make an attack.

Question. Had, or had not, the fact of the retreat of General Porter on the evening of the 29th of August been communicated to General Pope previous to his order of 8.50 p. m. of that day?

Answer. I have reason to believe that it had not. I was with General Pope when he received the information, on a note or on a piece of paper, from General Porter that he was retreating back to Manassas, and stating the reasons why he was falling back; but previous to that time I do not believe that General Pope knew that he was falling back.

Question. What time was it when he received that note?

Answer. I think it was between 8 and 9 o'clock at night; probably half-past 8 o'clock.

Question. Did the note you have just referred to state whether General Porter was falling back, or had determined to do so, and was himself going to the front?

Answer. The substance of the note was this, that seeing clouds of dust advancing, and knowing that the enemy had massed in his front cavalry, artillery, and infantry, he had determined to fall back to Manassas.

The note referred to, set forth on page 116 of the record, and addressed to Generals McDowell and King, commencing as follows: "I found it impossible to communicate by crossing the woods to Groveton," was then read.

The witness was asked—

Question. Is the note just read the one to which you refer?

Answer. That is the note.

The examination of the witness was here closed.

Whereupon the court adjourned to 11 a. m. to-morrow.

—

WASHINGTON, D. C., *December* 10, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The minutes of the last session were then read and approved.

Capt. DOUGLASS POPE was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state what is your rank in the military service?

Answer. I am captain and additional aide-de-camp.

Question. Were you with the Army of Virginia in its late campaign under Major General Pope?

Answer. I was.

Question. In what capacity?

Answer. As additional aide-de-camp to General Pope.

Question. Were you, or not, on the field of the battle of Manassas on Friday, the 29th of August?

Answer. I was.

Question. Did you or not, on that day, bear any order from General Pope to General Porter; and, if so, what was its character, and at what hour did you bear and deliver it?

Answer. I received an order from General Pope, to be delivered to General Porter, at half-past 4 o'clock. The purport of the order I did not know at the time. I went directly to General Porter with that order, and it reached him by 5 o'clock.

Question. Was, or was not, that the only order which on that day you bore to General Porter from General Pope?

Answer. It was.

Question. Where did you find General Porter with his command?

Answer. I found him at the forks of the road leading from Manassas to Gainesville and Groveton, on the railroad.

Question. What distance was that from Manassas Junction?

Answer. I do not know, of my own knowledge; but I have heard that it was between 2 and 3 miles.

Question. What distance from the battle-field where the engagement was then pending?

Answer. When I received the order, I was to the right of the battle-field, and I suppose it was a distance of about 3 miles from General Porter.

Question. Did you, or not, on delivering the order, learn its character?

Answer. I did not.

Question. What statements, if any, did General Porter make to you in regard to the movements which the order contemplated he should make?

Answer. In a conversation which I had with General Porter, after his reading the order, he explained to me on the map where the enemy had come down in force to attack him, and had established a battery. I understood him to say that the enemy had opened upon him; but what he had done, I do not now remember.

Question. How long did you remain with General Porter?

Answer. About fifteen minutes, I suppose.

Question. While you were there, or at any time before you left, did you observe any orders given or any indication of preparation for a movement in the direction of the battle-field?

Answer. I did not.

Question. In what condition were the troops there at that time?

Answer. I saw only a portion of them; the portion that I saw I believe belonged to General Sykes' division. They were on the road, between the forks of the road and Manassas—what small portion of the troops I saw that belonged to General Porter's corps. It was my impression they were halted there; I saw the arms of some of them stacked.

Question. They had their arms stacked?

Answer. Yes, sir.

Question. Was not the sound of the artillery of the battle then pending distinctly audible at that point?

Answer. It was.

Question. And was the sound of the small-arms distinctly audible at that point?

Answer. In regard to the small-arms, I do not remember; but I could hear the artillery very plainly, very distinctly.

Question. Was it continuous, indicating a continued action?

Answer. It was.

Question. Did, or did not, General Porter make any inquiry of you at all as to the condition of the forces then engaged in battle?

Answer. There were inquiries made of me by an officer—one of General Porter's aides-de-camp, I think. I do not think that General Porter said anything to me about it.

Question. As you have passed over the road, and know the distance, will you state within what time General Porter and his command could have reached the battle-field after the delivery of that order?

Answer. To have reached where I had received the order, it would have taken him two or three hours, I suppose—that is, to the extreme right of our army.

Question. Within what time would it have required him to reach the right flank of the enemy?

Answer. I could not state, because I do not know where the right flank of the enemy then was. My impression, though, from what General Porter said, was that

the enemy were nearly in his front. I supposed them about a mile from him. That was merely my impression from the conversation I had with General Porter.

Question. Did you, or not, have another interview with General Porter after that time?

Answer. I did not. After receiving a written reply to the order I had delivered to General Porter, I started on my way back, and I suppose I had got a mile or a mile and a half from where General Porter was, when I was overtaken by an orderly, who said General Porter wished to see me. I got part way back, when I met an officer, I supposed an aide-de-camp of General Porter, who said that General Porter wished to see me. I went back, and this aide-de-camp told me I better wait a few minutes. I did not see General Porter then.

Question. Had you, or not, seen this officer, whom you supposed to be an aide-de-camp, during your first interview with General Porter?

Answer. I had, and had had a conversation with him.

Question. In the presence of General Porter?

Answer. While General Porter was writing the reply to the order I had delivered to him.

Question. What seemed to be his rank?

Answer. He was a first lieutenant, I think.

Question. Did he, or not, perform any act or make any remark in the presence of General Porter which induced you to believe that he was an aide-de-camp? If so, state what that remark and what that act was.

Answer. I do not remember his making any remark to General Porter, or General Porter saying anything to him. My impression is, that he told me that he was aide-de-camp. I firmly believed at the time that he was General Porter's aide-de-camp. I did not see any act indicating that, excepting that he was associated with General Porter; he was very close to General Porter at the time I had the conversation with him; within hearing of General Porter, if he had listened to it.

Question. Do you, or not, suppose that his statement to you that he was an aide-de-camp of General Porter, could have been heard by General Porter if he had been listening to your conversation?

Answer. It could.

Question. Do I, or not, understand you, then, to say that that conversation occurred, in fact, in the presence of General Porter?

Answer. In the presence of General Porter; yes, sir.

Question. Were you, or not, charged by that officer with a message to General Pope that a scout had come in, reporting that the enemy were retreating through Thoroughfare Gap?

Answer. I was.

Question. Did you regard that message as given to you seriously or jestingly?

Answer. Seriously.

Question. How long a time had elapsed from the time of your interview with General Porter until you returned to General Porter's encampment?

Answer. About three-quarters of an hour, I suppose; between that and an hour.

Question. On your return to his encampment, did you, or not, observe any preparation on the part of his officers, or of the troops, for an advance upon the enemy?

Answer. I did not.

Question. What was the dress of this officer whom you supposed to be an aide-de-camp?

Answer. I do not remember. I do not know whether he had a staff officer's shoulder-straps on or a line officer's. I do not remember now which it was. He was in uniform.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. How does the witness fix the hour of the day when he left General Pope to bear the order?

Answer. From the date of the order, which was dated 4.30 p. m.

Question. Was the road which you took to bear the order from General Pope to General Porter direct or circuitous?

Answer. My impression is that it was a direct road.

Question. Did you pass through Manassas Junction?

Answer. I did not; that is, in conveying the order to General Porter I did not.

Question. Did you go up the railroad toward General Porter?

Answer. I did not; I met him right on the railroad.

Question. You have stated how you fixed the time when you received the order; how do you fix the time of its delivery?

Answer. By the distance, and the rate at which I carried the order.

Question. And so fixing it, you determine the order to have been delivered at 5 o'clock?

Answer. Not precisely at 5 o'clock; by 5 o'clock.

Question. You mean as early as 5 o'clock?

Answer. As early as 5 o'clock. It may have been three or four minutes after 5 o'clock.

Question. We understand you to say that you make this judgment as to the time from the distance which you had to pass over and the rate you went?

Answer. Yes, sir.

Question. When you first started to go back from General Porter to General Pope, did you take the same road back by which you had come to General Porter?

Answer. I did.

Question. When you made your second start, after the interview with the person whom you supposed to be an aide-de-camp, to return to General Pope, did you still pursue the same road by which you had come to General Porter?

Answer. Yes, sir.

Question. Please to recollect whether an aide-de-camp or other officer of General Porter, at the time of your second departure from General Porter's, pointed out to you another and a shorter road to take?

Answer. I do not think he did.

Question. Do we understand you correctly that you did not know, when you bore the order, its purport?

Answer. I did not.

Question. When did you first learn the purport of the order?

Answer. I don't recollect at what time; it was since then, though.

Question. About how long since is it that you learned the purport of the order?

Answer. I think it was at Saint Paul the first time I ever read the order, in September.

Question. You then, for the first time, saw the terms of the order and read it?

Answer. Yes, sir. I may have read it before, but I do not recollect.

Question. You did not read it until long after its delivery, I suppose?

Answer. No, sir.

Question. Having, then, first become cognizant of the terms of the order at a time considerably subsequent to its delivery, you fix the time when you received it from General Pope—I mean the hour of the day—by finding it to be dated 4.30 p. m.?

Answer. The reason I found it to be dated at 4.30 p. m. was that I opened the order to show it to General McDowell, and I then noticed the heading of it, and saw the date of it. I then asked one of my orderlies, who was with me, what time it was, to see if I could get back to General Pope before dark.

Question. This was before the delivery of the order to General Porter?

Answer. Before; yes, sir.

Question. Where did you meet General McDowell?

Answer. About a half a mile from where I left General Pope, and on the direct road to General Porter.

Question. By what authority did you open the order?

Answer. General McDowell asked to see it. It was not a sealed order.

Question. At what time did you get back to General Pope?

Answer. It was after dark when I got to General McDowell. I staid with General McDowell fifteen or twenty minutes. He had then to show me where General Pope's headquarters were. It was then, I should think, about 8 o'clock when I got to General Pope.

Question. Had General Pope moved his headquarters?

Answer. He had not.

Question. If you took the same road back by which you went from General Pope to General Porter, how was it that General McDowell had to show you where General Pope's headquarters were?

Answer. I first inquired where General McDowell's headquarters were. A man told me they were up on a hill. I went up on that hill; but there were so many camp-fires that I could not tell where General Pope's headquarters were.

Question. Was the night falling when you left General Porter's headquarters the second time to return to General Pope?

Answer. I think the sun was then about going down. It was not dark—just evening—late in the evening.

Question. How would you fix the hour of the day?

Answer. It was about 6 o'clock, I suppose.

Question. When you left General Porter's the second time?

Answer. Yes, sir.

Question. You suppose it was then about sundown?

Answer. I suppose it was about sundown.

Question. Would you say after sundown or before?

Answer. I do not remember.

Question. How far was it from General Porter, or from where you started from General Porter's location, to the place where you passed General McDowell on your return?

Answer. It was about two miles and a half.

Question. And while you made that two miles and a half, it had become dark?

Answer. I rode slowly back; not rapidly.

Question. When you reached General McDowell's, had the battle ceased?

Answer. It had. I heard some firing, though, after I reached General McDowell.

Question. How much firing?

Answer. Not much; it sounded like 200 or 300 men just skirmishing in the woods.

Question. When you were brought back by the orderly and the aide-de-camp, as you supposed him to be, you did not find General Porter. Do you know where he then was?

Answer. I did not.

Question. Did anything occur to induce you to believe that General Porter had gone to the front?

Answer. There did not. I supposed he had just walked off a short distance, and would be back in a few minutes.

Question. From the time when you arrived to deliver the order to General Porter up to the time of your second departure from General Porter's location to go toward General Pope, about what period of time elapsed?

Answer. I should suppose about an hour. It may have been a little more than an hour. I should think at least an hour.

Question. How long did you stay at General Porter's headquarters or location after you were brought back by the orderly and the aide-de-camp?

Answer. A very few minutes.

Question. Would you say five or ten minutes?

Answer. About ten minutes.

Question. Did we understand you correctly to say that it was about fifteen minutes after you delivered the order to General Porter before you first started on your return?

Answer. It was about fifteen minutes.

Question. The remainder of the hour, then, which you spent near General Porter's location, was passed in your going about a mile and a half and returning about a mile and a half, and some ten minutes further of delay in General Porter's camp?

Answer. Yes, sir.

Question. Will you state, if you please, at what point General Pope was when you received from him the order of which you have spoken?

Answer. I cannot state exactly where it was. It was on the battle-field—the extreme right of it.

Question. Do you know the location of the Warrenton and Gainesville turnpike, and did you know it at that time?

Answer. I did not.

Question. Do you know now?

Answer. No, sir; I have not looked at the map since then.

Question. Do you know whether the accused was located near any road?

Answer. Yes, sir; I do.

Question. You are unable, I understand you, to designate the road?

Answer. Excepting that it was a turnpike running from Manassas Junction to the battle-field.

Question. A turnpike?

Answer. I think it is a turnpike. It is a very broad road, running from Manassas Junction directly to the battle-field.

Question. Was he near the point which was intersected by that latter road?

Answer. He was right at the point.

Question. When you received the order of 4.30 p. m. from General Pope, did you take that road in order to get to the accused?

Answer. I struck that road between a quarter and a half a mile from where General Pope was. I am not positive that the road I struck was the Manassas turnpike, but it led into that turnpike.

Question. After striking the road to which you now refer, what distance, if any, did you travel upon it?

Answer. I do not know.

Question. Did you travel upon it until you struck any other road; and, if so, what other road did you strike?

Answer. I struck that road, and was then guided by my orderly. After I was on the Manassas turnpike, seeing it was a very good road, I asked what road it was, and he told me it was the Manassas turnpike. I did not inquire about the road until I got on this broad road. I traveled on the road I started on until I struck that broad road leading from Manassas.

Question. How far did you travel upon what you call the broad road after you struck it?

Answer. I do not recollect.

Question. Can you tell in what direction of the compass you did travel upon that road—north, south, east, or west?

Answer. I think it was east.

Question. Did that broad road to which you have referred, and which you afterward followed, take you to the accused?

Answer. It did.

Question. Will you state at what point the accused was when you found him with the order?

Answer. He was on that broad road leading from Manassas. There was another road running along the railroad, and at the forks of those two roads I found him; right against the railroad.

Question. Are you positive that you returned from that point, where you found the accused, to General Pope, exactly by the same road that you traveled from General Pope's to deliver the order?

Answer. I am not positive that I went all the way on that same road, but the ma-

jority of the way I went on that same road. It was very dark, and I know I got off the road two or three times, and was directed by the camp-fires in front of me.

Question. Recollect, if you can, if it was suggested to you by any one, and, if you can recollect, by whom, that there was a shorter road by which you could get back than the road that you had traveled?

Answer. I do not think any one said a word to me about it.

Question. When you started to carry the order, had you any personal knowledge of the roads?

Answer. I had not.

Question. Had you any one with you to point out the road that you should take to deliver the order?

Answer. I had not.

Question. In returning, had you any one to point out the road to you, except so far as the orderly may have known it?

Answer. I had not.

Question. When you started from General Pope with the order, did you know, and, if so, how did you know, where to find the accused?

Answer. I did not know exactly where I would find him. I was directed to go to a place which, if I had gone to it, would have brought me 2 or 3 miles in advance of General Porter.

Question. Who gave you that direction?

Answer. It was Colonel Ruggles. He pointed in the direction; he did not tell me any certain place to go to.

Question. You refer to Colonel Ruggles, of General Pope's staff?

Answer. He was then chief of General Pope's staff.

Question. What induced you to take a different direction from the one pointed out by Colonel Ruggles?

Answer. I could find no road to go directly to the place I was directed to without going through the woods, and I was afraid I could not find the place then; so I took this road, as my orderly had directed. He said that we could go as far as the railroad there, and we might meet some of General Porter's troops.

Question. Did you meet any of General Porter's troops until you got to the railroad? If so, how far from the road?

Answer. I do not think I met any until I first met General Porter.

Question. By what information were you enabled, not having the actual position of General Porter, to find him?

Answer. I inquired at the railroad. When I got to the railroad, I saw some stragglers, and I inquired if they knew anything about General Porter. It was an officer I inquired of. He said that General Porter was right straight ahead, on the other side of the railroad.

Question. What information had you that enabled you, upon leaving General Pope, to go in the exact direction, which you think you traveled, so as to strike the railroad at the point at which, or near which, you found the accused?

Answer. I was directed by my orderly that that road led across the railroad.

Examination by the accused here closed.

Examination by the COURT:

Question. At the time you delivered the order of 4.30 p. m. to General Porter, how far was the head of his column from the left flank of General Pope's forces?

Answer. I really do not know.

Question. When you received the order of 4.30 p. m. from General Pope, was he or not near Sudley Springs?

Answer. I do not know where Sudley Springs is.

Question. Describe more particularly where you were when you started to carry the order of 4.30 p. m. to General Porter. Which side of the Warrenton turnpike, for instance?

Answer. He was on the right-hand side of the Warrenton turnpike.

Question. How far from it?

Answer. I suppose about 400 or 500 yards.

Question. Near the old railroad bed?

Answer. I really do not know.

Question. How far was it from the extreme right to the extreme left of our army on the battle-field that day?

Answer. I do not know.

Question. Could you point out on the map where you were?

Answer. I will try. [The witness accordingly indicated the position on the map.]

Question. You heard firing, you say, whilst with General Porter. Did that firing proceed from the front, where General Pope was, and did you, or not, hear firing from General Porter's command, as if engaged with the enemy?

Answer. I did not hear firing from General Porter's command. It was in the direction where I had left General Pope?

Question. Did you take the road as laid down on the map before the court leading from Sudley Springs to Manassas Junction?

Answer. I did. I did not strike the railroad but once, and there I found General Porter.

Question. At what time did the action of the 29th of August commence, and was, or was not, General Porter within hearing of the fire?

Answer. At the time the action commenced, I do not know. At the time I delivered the order, he was. The time the action commenced, I think, was about 12 o'clock.

The examination of this witness here closed.

Surg. ROBERT O. ABBOTT was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. What is your position in the military service?

Answer. Surgeon in the United States Army.

Question. Were you, or not, attached to the command of General Pope during the late campaign in Virginia?

Answer. I was attached to the corps of General Porter, as medical director of the Fifth Army Corps.

Question. Did, or did you not, bear any order from General Pope on the 29th of August last to Generals McDowell and Porter; and, if so, what was its character, if known to you?

Answer. I did not know the character of the order. I took a written order from General Pope about half-past 10 o'clock in the morning of the 29th, I think, to General McDowell and to General Porter.

Question. Did you, or not, deliver that order to each of those generals?

Answer. I did.

Question. At what hour would you say?

Answer. I think about 1, between 12 and 1 o'clock; toward 1.

Question. Where did you find General Porter and his command at the time you delivered him that order?

Answer. About 2 miles from Manassas Junction, on the Gainesville road.

Question. Will you indicate upon this map the point; do you mean on the railroad or on the turnpike?

Answer. It was on the road; I crossed the railroad, I think, going there, as near as I can recollect; I could not indicate the exact point on the map.

Question. Where was General McDowell with his command?

Answer. He was about a mile in the rear of General Porter, on the same road.

Question. Do you mean in the rear, nearer Manassas Junction?

Answer. Yes, sir.

Question. Did, or did you not, deliver a copy of that order to each of those generals, or did you exhibit it to each of them separately?

Answer. I gave a separate order to each of them.

Question. Addressed to them jointly?

Answer. They were separate orders; duplicates, I believe, of the same order, so I thought, at the time.

Question. Did you have any conversation with General Porter in regard to the order you delivered to him?

Answer. Nothing more than I told him there was the order from General Pope, which he had previously sent me for; nothing more than that.

Question. Do I understand that you had borne a message from General Porter to General Pope, asking that he would give him a written order directing his movements?

Answer. Yes, sir.

Question. Was that a written or a verbal request?

Answer. It was a verbal request; at the same time he gave me a written order to General Pope.

Question. You mean a written request?

Answer. Yes, sir. As I understood him, he asked for an order from General Pope, and requested me to ask General Pope for a written order to him.

Question. Did you, or not, continue with General Porter's command during the remainder of that day?

Answer. No, sir. After joining General Porter then, I left him to attend to the medical affairs of the corps—to hasten up supplies.

Question. At what hour of that day afterward did you again see him with his command?

Answer. I did not see him again until early the following morning. I started to come up, but lost my way in the woods.

Question. How long did you remain with him after delivering the order to him?

Answer. Only about five minutes.

Question. He made no remark upon the character of the order?

Answer. He made some remark, but it has escaped me. Upon commencing to read the order, he made some remark. I do not now remember what it was.

Question. Had the battle commenced when you delivered that order?

Answer. No, sir; as far as the corps was concerned.

Question. I do not speak of General Porter's connection with the battle, but I speak of the engagement between the other forces of General Pope and the enemy.

Answer. Yes, sir; in front.

Question. Was there not cannonading distinctly heard at the time?

Answer. There had been that morning.

Question. Was it not heard at the time you delivered the order?

Answer. I do not recollect that it was.

Question. You think you delivered it between 12 and 1 o'clock?

Answer. Toward 1 o'clock, I think.

Question. What do you suppose to have been the distance between the point where you found General Porter with his command and the left wing of General Pope's army?

Answer. I can form no idea.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. You have spoken of an oral message which you took from the accused to General Pope, and of a written message. Will you state what were the contents of the written message, as far as you can remember?

Answer. I did not know what the contents of the written message were.

Question. Do you remember whether the written or the verbal message, one or both of them, contained information for General Pope as to the location of some of the troops?

Answer. Nothing was said to me.

Question. Do you remember of having heard any conversation between General McDowell and the accused?

Answer. I did not hear the conversation.

Question. Or any part of it?

Answer. I did not hear it.

Question. What reason, if any, did the accused assign for sending the message of which you have spoken, that he might have written orders from General Pope?

Answer. He told me to tell General Pope that he had mentioned the orders he had received to General McDowell, who remarked that it was strange that he knew nothing of them, and that he, General Porter, thought there was evidently some confusion in the orders, and requested General Pope to give him written orders.

Question. Do you remember how the corps under command of the accused was moving at the time you received from the accused the message of which you have spoken?

Answer. I supposed they were moving on toward Centreville—in that direction.

Question. Do you know under what orders that movement was being made?

Answer. I do not; I supposed under orders from General Pope.

Question. Did you understand from the accused at the time that he was moving in the execution of orders from General Pope?

Answer. That is my impression, though I do not recollect any particular conversation.

Question. Did I understand you to say that you lost your way that night?

Answer. Yes, sir; upon attempting to join the corps with supplies that I was bringing up, it came on dark.

Question. In what direction were you going?

Answer. I was on the Gainesville road then.

Question. In what direction were you moving with the supplies in relation to where you understood, if you did understand where, the accused was with his force?

Answer. I was moving on the Gainesville road, in that direction, inquiring as I went along.

Question. Had you traveled on that road before; were you familiar with it?

Answer. Not at all familiar. I never was on it before I delivered that order.

Question. Was it very dark or not?

Answer. It was dark; quite dark.

Question. How were you traveling?

Answer. On horseback.

Question. Did you come up with the force of the accused?

Answer. I did not.

Question. Did you try?

Answer. I did, but having an ambulance loaded with supplies, I could not make any headway at all.

Question. Medical supplies?

Answer. Medical supplies.

Question. Did you anticipate a battle, or did you know that a battle had been going on?

Answer. I did not know whether the corps had been engaged or not, then.

Question. Did you anticipate there would be a battle?

Answer. I thought there would be.

Question. Were the medical supplies you were bringing up designed to meet the contingencies of a battle?

Answer. To make up deficiencies which I was afraid might occur.

Question. When and where; because of the battle?

Answer. Because of the battle, if prolonged.

Question. At what time did you start with the supplies, and from what point?

Answer. I started from just the other side of Bull Run Bridge, about 6 o'clock, I think.

Question. When did you get up with the army?

Answer. In the morning—the next morning—I started, and met General Morell, who told me the corps was marching on to Centreville, and turned me back. I turned back the supplies, and went on to Centreville, and found there was a mistake. I then turned to the left, and went to the stone bridge over Bull Run. There I left the supplies and joined General Porter, and found out where his lines were.

Question. Where was he when you joined him?

Answer. He was in the advance—the extreme advance. The enemy were then firing at the time.

Question. Was that on the morning of the 30th?

Answer. On the morning of the 30th.

Question. At what time of the morning did you get there?

Answer. I suppose about 8 o'clock, as near as I can remember.

Question. Were you with General Porter when, in the night between the 27th and the 28th of August, he moved from Warrenton Junction to Bristoe Station?

Answer. Yes, sir.

Question. State the condition of the road as to its being clear or blocked up.

Answer. The road was a great deal blocked at the time with wagons and straggling troops.

Question. At what time did the reveille sound that morning?

Answer. We started very early, I recollect.

Question. Give, as nearly as you can, the hour.

Answer. Soon after daylight we started.

Question. Were any of the troops in advance of you at this time when you started, about break of day?

Answer. Yes, sir.

Question. Do you know about what time the first movement was made?

Answer. I do not.

Question. What was the character of the night—dark or clear?

Answer. It was a dark night.

Question. Do you know of any difficulty or confusion or intermingling of the different divisions or brigades occurring, in consequence of an early movement to start, about 3 o'clock?

Answer. I do not, before we started.

Question. Do you know of special efforts made by General Porter and the members of his staff to clear away the obstructions?

Answer. Yes, sir.

Question. I wish you to state what were my relations to you during our march, and whether they were of an intimate character or not.

Answer. We were always on very friendly and free terms.

Question. If I ever manifested at that time during the march, either in conversation or in spirit, any disposition to trammel the movements of any portion of the army, or in any manner whatever to disobey any order, would you be likely to have known it?

Answer. I think I should have known it.

Question. Did I ever manifest in any manner any other disposition than to do my duty fully?

Answer. Never, as far as I saw or heard.

The examination by the accused here closed.

Examination by the COURT:

Question. How far from where the road on which you were traveling with the order for General Porter crossed the railroad did you find General Porter and deliver the order?

Answer. I cannot recall now. I have a very faint recollection of the road.

Question. You say you crossed the railroad?

Answer. I think I did, either that day or the next morning; but I am not positive now which.

Question. How far was General Pope, when you received the order, from the place where you found General Porter when you delivered to him the order of which you have testified?

Answer. I should think it was about 7 or 8 miles, as near as I can judge; may be a little more.

Question. Was, or was not, the order which you state you bore from General Pope to General Porter on the 29th of August the only one borne by you on that day to him from General Pope?

Answer. That was the only one.

The examination of the witness here closed.

Whereupon the court adjourned to 11 a. m. to-morrow.

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WASHINGTON, D. C., *December* 11, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, being also present.

The minutes of last session were read and approved.

Lieut. Col. THOMAS C. H. SMITH was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state in what capacity you were serving in the Army of Virginia in its late campaign, under General Pope, in August last?

Answer. I was aide-de-camp on the staff of General Pope.

Question. Did you, or not, on the 28th or 29th of August, carry any orders from Major-General Pope to Major-General Porter which concerned his movements on those days?

Answer. I did not.

Question. Did you, or not, see General Porter during either of the days of the 27th, 28th, and 29th of August?

Answer. I saw General Porter on the afternoon of the 28th.

Question. At what place and under what circumstances did you see him?

Answer. I had been sent back to the ammunition on the train at Bristoe, and charged with its distribution. General Porter wished over 400,000 rounds; General

Hooker something over 90,000 rounds. About 2 or 3 o'clock I had sent forward to General Porter some 320,000 rounds, and had seized wagons to forward the balance, and left Captain Piatt in charge. The business being then sufficiently forward, I went on to find General Pope. On getting to the point where I had left General Pope in the morning, I found he had moved on, and, to inquire the road he had taken, I went to General Porter's headquarters, near the Manassas water station. I found General Porter in his tent, and asked him which road General Pope had taken, and he informed me. I had some ten minutes' conversation with him. One of his staff was present; I forget his name.

Question. Will you state that conversation?

Answer. After asking him about the road, I told General Porter the amount of ammunition that I had sent forward to him, and also that the balance would come immediately forward. I asked him if he had received it, or made some remark; I cannot remember the exact expression. General Porter said that he had not; that was the substance of his reply—either that he had received hardly any of it, or none of it, if I remember aright. I expressed some surprise, and said that it had been sent forward to the front, as ordered; and, either in reply to some question of mine or to some remark, or of himself, he said that he had no officers to take charge of it and distribute it, or look it up, or something of that kind. I remarked that he could hardly expect us at headquarters to be able to send officers to distribute it in his corps; that it had been sent forward on the road, in the direction where his corps was. He replied that it was going where it belonged; that it was on the road to Alexandria, where we were all going. I do not know as it is evidence to give the spirit in which this was said—the way it impressed me. Those remarks were made in a sneering manner, and appeared to me to express a great indifference. There was then a pause for a moment. General Porter then spoke in regard to the removal of the sick and wounded from the field of Kettle Run. He said it would hurt Pope, leaving the wounded behind. I told him that they were not to be left behind; that I knew that a positive order—an imperative order—had been given to General Banks to bring all the wounded with him, and for that purpose to throw property out of the wagons if necessary. To this General Porter made no reply in words; but his manner to me expressed the same feeling that I had noticed before. This conversation, from General Porter's manner and look, made a strong impression on my mind. I left him, as I have said, after an interview of about ten minutes, and rode on, arriving at our headquarters on Bull Run just as we entered them and pitched our tents for the night. After my tent was pitched, and I had had something to eat, I went over to General Pope, and reported to him briefly what I had done in regard to the ammunition. I then said to him, "General, I saw General Porter on my way here." Said he, "Well, sir." I said, "General, he will fail you." "Fail me," said he; "what do you mean? What did he say?" Said I, "It is not so much what he said, though he said enough; he is going to fail you." These expressions I repeat. I think I remember them with exactness, for I was excited at the time from the impression that had been made upon me. Said General Pope, "How can he fail me? He will fight where I put him; he will fight where I put him;" or, "He must fight where I put him; he must fight where I put him"—one of those expressions. This General Pope said with a great deal of feeling, and impetuously and perhaps overbearingly, and in an excited manner. I replied in the same way, saying that I was so certain that Fitz John Porter was a traitor, that I would shoot him that night, so far as any crime before God was concerned, if the law would allow me to do it. I speak of this to show the conviction that I received from General Porter's manner and expressions in that interview. I have only to add that my prepossessions of him were favorable, as it was at headquarters, up to that time. I never had entertained any impression against him until that conversation. I knew nothing with regard to his orders to move up to Kettle Run, and I knew nothing of any failure on his part to comply with any orders.

Question. State more distinctly the point where you saw General Porter on the 28th of August.

Answer. He was encamped at the Manassas water station, between Bristoe and the junction. The water station was a short distance from his headquarters. [The witness indicated upon the map before the court where he thought the place to be.] I do not think the water station is more than one-third the distance from Bristoe to Manassas Junction. That is my impression; I cannot speak positively about it.

Question. In the conversation to which you refer, did, or did not, General Porter manifest any anxiety to get possession of, and have distributed in his corps, the ammunition of which you speak?

Answer. No, sir; I thought he showed an utter indifference upon the subject; showed it very plainly.

Question. At what hour of the day did this conversation between you and General Porter take place?

Answer. I think it must have been about 4 o'clock in the afternoon; half-past 3 or 4 o'clock.

Question. In anything that was said in that conversation or in the manner of General Porter, was there evidenced any desire or any willingness on his part to support General Pope in the military operations in which he was then engaged?

Answer. Quite the contrary to that.

Question. Can you state whether the disinclination to support General Pope, which you thought he manifested, was the result of disgust with the immediate service in which he was then engaged, or of hostility to the commanding general, or upon what did it seem to rest?

Answer. It seemed to me to rest on hostility. But I do not know that I could analyze the impression that was made upon me. I conveyed it to General Pope in the words that I have stated. I had one of those clear convictions that a man has a few times, perhaps, in his life, as to the character and purposes of a person whom he sees for the first time. No man can express altogether how such an impression is gained from looks and manner, but it is clear.

Question. Had you passed over the road between Bristoe Station and Warrenton Junction on that day or on the previous day?

Answer. On the previous day, the 27th, I came over it, after General Pope.

Question. At what hour of the day did you pass over it?

Answer. I should say that I left our headquarters, about a mile from Warrenton Junction, about half-past 4 or 5 o'clock in the afternoon; I should say it was past the middle of the afternoon.

Question. What was the condition of the road then?

Answer. For the first mile and a half, until you get to Cedar Run, the road was bordered on either side by open fields, or open woods, over which troops could march easily, in great part without going on the road. Indeed, I doubt whether there is any regular road a good part of the way up. The troops marched through the fields to Bristoe Station. A road has been worn by the troops, I suppose. At Cedar Run, just above the railroad, on the west side, there was a bridge, and a ford with it, and men coming this side of Cedar Run soon struck a small piece of woods, which is perhaps [less] than a quarter of a mile. I give these things as I remember them. I may be mistaken in this point. There it is rather a bad road for marching. Then, for a considerable distance, and for most of the way until you get to Kettle Run, the road was practicable, and also the fields on either side of it. I remember that distinctly, for at Catlett's Station I saw something of the character of the country, as I stopped there a few moments. At Kettle Run there was another bad place. There was, however, a very practicable ford there; a narrow ravine, the road running down, with high banks to it, on either side. I should say that there there was a half a mile or three-quarters of a mile of the road in which, if there was a wagon train, the march of troops would be badly impeded. The railroad track was good, all that I saw of it; men could march upon it.

Question. Were you, or not, present at the battle of the 29th of August?

Answer. Yes, sir; I was present.

Question. Throughout the engagement?

Answer. I left with General Pope when he rode on to the field, but on the way out he sent me with an order off the road, so that I did not get on the field for two or three hours after that.

Question. At what time did you regard the battle as commencing?

Answer. The smoke was rising over a considerable portion of ground, I should say a mile, plainly in view, when we were at Centreville; and there was some heavy cannonading. I should say it was about 10 or 11 o'clock when I first came to Centre-

ville, and it was about 11 or 12 o'clock when I saw the appearance of which I speak—the sign of a heavy action, from the smoke rising. It was very plainly in view from Centreville; you looked right down upon it, and you could hear the sound of the guns. I did not ride up to the town at first, but finding that General Pope had not ridden on, as I had supposed, I rode back to Centreville, and then it was I saw the appearance I speak of, about 11 or 12 o'clock. I should mention, too, in order that it may be clearly understood in regard to the action, that at the time I was sent off from the road, while General Pope was riding on the field, there was a cessation of cannon firing for a considerable time, I should say for certainly a half an hour.

Question. Was or was not the battle raging at 5 p. m. on that day?

Answer. Yes, sir; severely.

Question. Are you sufficiently acquainted with the disposition of the forces under General Pope, and of those of the enemy at that hour, to express an opinion as to what would have been the effect of an attack by General Porter's corps upon the right flank of the enemy at between 5 and 6 o'clock p. m. of that day?

This question was objected to by the accused.

The court was thereupon cleared.

After some time the court was reopened, and the judge-advocate announced the decision of the court to be that the witness shall answer the question.

The question was then repeated as above.

Answer. I do not know as I am sufficiently acquainted with the numbers and disposition of the enemy to give a conclusive answer in regard to that. I can give my view of it, and give the reasons why I think a flank attack would have been successful. The enemy were fighting a defensive battle.

At this point the accused suggested to the court whether, in view of what the witness had said in regard to his knowledge of the numbers and disposition of the enemy, it was proper for him to proceed with his answer.

At the request of a member of the court, the court was cleared.

After some time the court was reopened; whereupon the judge-advocate announced the decision of the court to be that the witness proceed with his answer.

The witness continued as follows:

Answer. The enemy were fighting a defensive battle. Their right lay near the turnpike road between Warrenton and Centreville. The main force, from which they were detached for the time being, were off toward Thoroughfare Gap, or beyond it. Their position was a strong one for defense in front, and in the direction in which the three corps of Sigel, Heintzelman, and Reno were fighting them. Far and back from the front they had a line of retreat toward Thoroughfare Gap, toward their main force. The direction of a flank attack moving on the road from Manassas to Gainesville, and then moving in upon their flank, was such as to cut off their line of retreat. We drove them off the ground as it was. I believe that if the attack had been made on their flank at that time, exhausted as they were by the fighting through the day, it would have made the defeat a rout, by striking them on their line of retreat toward their main forces, and rolling them up on Bull Run and the east of the Gum Spring road, and so on in that direction. In saying that I did not know their disposition sufficiently to give a conclusive answer, I meant, of course, that I did not know the amount of force on their right. But from the fact that all our attack had been directed with our left resting on that road, and their right apparently resting there, I supposed that if they had had a heavy force beyond that road they would have attempted a flank attack upon us. The appearance of the field was such as to lead one to suppose that the entire force of the enemy, except, perhaps, something thrown out to guard that flank, was right in front of us on those ridges. That was where all their artillery fire was, and there was where the fight continued during the day. They were fighting in that position, with their backs toward their main force. Of course, though we might drive them off the field, we could accomplish not any great success, with their great force in the rear and off beyond Thoroughfare Gap. This flank attack was the main attack to decide the battle, by striking them quartering on the flank and cutting off their line of retreat, so that they could not unite with their main force in that direction.

Question. You have no knowledge of General Porter's position with his command during the 29th of August?

Answer. I have not. I could say where he was not, because I was over that road once. I could mention one more fact, that of seeing clouds of dust, as indicating the march of some forces toward Centreville, as near as I could judge.

Question. At what hour of the day did you see these clouds of dust?

Answer. That was the time I speak of, when I was sent by General Pope off the road, off to the south, on the Groveton and Manassas road, I supposed.

Question. At what hour of the day was that?

Answer. I was sent off about noon, 11 or 12 o'clock, the time I spoke of before; I was sent over to find General McDowell; they gave me a point where they said I could find him, but when I got there they told me he had gone back to Manassas; that was at a large brick house, with a well in the yard; it may be fixed by other evidence, if necessary; it was where General Sigel's supply train was during the day, on the plain, open road from Manassas to the battle-field.

Question. Do I understand you to say that you have no knowledge of what forces were marching, and whose march caused the clouds of dust that you saw?

Answer. No, sir; I could see the dust rising on the road; I should think as much as a mile or two from Manassas, in the direction of Centreville; although I may have so misunderstood the character of the country, which I think I did not, that these forces were marching in some other direction; I merely state my impression at the time I saw it; there may have been a train moving along there.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. State whether you belong to the Regular Army or to the volunteer service.

Answer. I belong to the First Ohio Cavalry Volunteers—its lieutenant-colonel.

Question. About what time is the date of your commission?

Answer. The date of my commission is August 24, 1861.

Question. Had you belonged to any army before that time?

Answer. No, sir.

Question. Have you at any time received a military education?

Answer. No, sir.

Question. In what campaign in which there had been a battle had you ever been before the campaign of General Pope in Virginia?

Answer. I was not in the battle of Shiloh; but I arrived there the morning after the battle, and I was present during the approaches and siege of Corinth, and served there in command of my regiment, and up to the time that the pursuit of the enemy was abandoned after the evacuation of Corinth.

Question. When did you join the force of General Pope during his campaign in Virginia?

Answer. I joined General Pope somewhere about the 9th of July last here in Washington, and served with him during the whole of his campaign in Virginia.

Question. When for the first time did you see the accused?

Answer. I saw him for the first time on the day I speak of. I may have seen him in the morning. But I do not remember ever having seen him before that interview on the 28th of August.

Question. Had you had any correspondence with him at any time before you then saw him?

Answer. No, sir.

Question. Were you acquainted with the accused when you saw him on the 28th of August, and did you know what his services had been in the army during this rebellion?

Answer. Nothing more than I had heard Colonel Marshall at our headquarters speak of him; and also other officers at our headquarters.

Question. Favorably or otherwise?

Answer. Favorably.

Question. Have you had any interview with the accused since the 28th of August?

Answer. I do not remember of having had any interview with him. I have met him occasionally, and spoken to him, not to amount to anything, or to make any impression on my mind. I do not think I have exchanged a half a dozen words with him.

Question. Have you had any correspondence with him since the 28th of August?

Answer. No, sir; not that I remember.

Question. When you have seen him since, and when, as you say, you have spoken to him occasionally, did you exchange the usual civilities between officers and gentlemen?

Answer. I believe I have. I may have omitted it from absent-mindedness. I believe I have always exchanged them.

Question. If you did it, when you did it were you then under the impression that the accused had been a traitor in the Pope campaign?

Answer. Yes, sir; and I have not changed that impression.

Question. Was it your sole purpose in visiting him on the 28th to inform him in regard to the ammunition for his corps?

Answer. I have not said that that was my purpose.

Question. I ask you, was it?

Answer. No, sir. My purpose was what I have stated in my evidence, to inquire the road which General Pope had taken. I may also have intended to have asked him in regard to the ammunition. That may have been one inducement. But my main purpose, the immediate reason for riding over to see him, was to ask if he could tell me in what direction General Pope had gone, and how I could get to his headquarters. And I am confident I am correct in this impression, because I remember of inquiring in the corps, riding up to a house which I supposed would prove to be the headquarters of some one, but I got no satisfaction there.

Question. Did you make the inquiry of General Porter, and, if you did, [did] he give you the direction?

Answer. Yes, sir; and he told me what road.

Question. Do you know in what manner an officer in command of a corps makes a requisition for ammunition, and of whom he makes it, when he stands in need of it?

Answer. I know that in this instance there was a memorandum handed to me of the amount General Porter wanted.

Question. The question is, whether you know what is the practice generally.

Answer. I do not know how a commander of a corps would make such a requisition, for I have never served as aide to a commander of a corps. I know, having had command of a regiment, how requisitions are made for ammunition. In this instance there was no regular requisition put in—merely a memorandum handed us. There were persons with the train. A Captain Scheffler was sent by General Banks with the train, to assist in the distribution of the ammunition, and to have charge of it. And Lieutenant Shunk, an ordnance officer from our headquarters, was also present. My

business there was not so much that of an ordnance officer. The reason I was sent back was because it was important to take wagons off the road to send this ammunition forward—to seize wagons, if necessary, to get it forward; to press men in to load the wagons, and to use authority of that kind. That was the reason, I suppose, why I was sent back by General Pope.

Question. Do you know in what manner General Pope knew that the accused wanted additional ammunition?

Answer. I knew by the memorandum, which was handed to me with General Porter's signature to it, wanting about 405,000 rounds.

Question. That memorandum you saw when?

Answer. I saw it on that day, the 28th of August, and again, as I suppose, after General Porter's arrival on the ground.

Question. What time of the day of the 28th?

Answer. I should think it was between 10 and 11 o'clock that I received it. It may have been earlier. I cannot remember distinctly whether that memorandum was sent to me at the train or whether I received it before starting for the train, for the reason that I may have started to distribute Hooker's ammunition.

Question. You were sent by General Pope to see to the compliance with that request?

Answer. Yes, sir. He ordered Colonel Clary to seize some wagons, and, as he was going off, he told me I better go to assist him in the matter and to take charge there—some expression of that kind. I consider myself as having charge of the active duties connected with the distribution of this ammunition. The ordnance officer had charge of the memoranda. In regard to forwarding it, I was placed in charge to see that it was sent forward in charge in the way I have said—to use authority to clear the roads of wagons, to seize wagons, to direct about their seizure, to press men to load the wagons, &c.

Question. Are you to be understood now, with the knowledge that the accused had requested ammunition as early as the morning of the 28th, to say that you were under the impression, when you afterward saw the accused, that he was indifferent whether he had the ammunition or not?

Answer. Yes, sir.

Question. That opinion you derived, did you, exclusively from what you have termed his sneering manner, or was it from his manner in other particulars that were not sneering?

Answer. I do not wish to say that his manner was not gentlemanly and courteous, as it was throughout; but—and I stated so—there was his indifferent and sneering manner in regard to these matters of which I spoke. I do not know as I understood indifference in regard to the ammunition so much as his general indifference in regard to the success of General Pope in that campaign. I am speaking now, of course, of my impression from the whole interview. The first impression of that kind I received was from his reply in regard to the ammunition, which was also increased by the whole look and manner of the man.

Question. Do I understand you now to say that, from your present recollection, you do not remember that his manner was sneering?

Answer. No, sir, I do not say that. I am meaning to make a distinction from rudeness; his manner was not rude or insulting—nothing of that kind.

Question. In relation to what did you understand him as sneering at all—from anything that he said?

Answer. I do not know that a person can know to what a sneer is directed. All his expressions in regard to ammunition, and in regard to other matters, gave me the impression that his manner was sneering; that it was indifferent. If the object is to know about the impression that was made upon my mind, I will say that it was that of indifference and hostility to the success of General Pope. The sneers, among other things, gave me that impression.

Question. If his answers and conversation with you during the whole interview were not only not rude, but polite and courteous, will you say in what there could have been any sneering according to your recollection?

Answer. By sneering, I refer to the manner.

Question. Can you describe the manner in words?

Answer. I do not know that I could describe it any better than to say that it was a sneering, indifferent manner and tone. As for the sneering, it was somewhat suppressed.

Question. Without having ever before seen him, and, of course, without knowing what his manner in conversation was habitually, how are you able to tell that his manner upon that occasion was not his usual manner?

Answer. I am able distinctly to tell, because that manner and tone were whenever he spoke of anything connected with this matter of the ammunition, and the matter of General Pope's conduct in leaving the wounded, &c.; it was when he spoke of those matters connected with General Pope.

Question. Had you any conversation with him in relation to any other matters on that occasion?

Answer. Nothing more, as I remember, than the matter in regard to asking about the road. I dare say there was some other general conversation.

Question. You seem not to have understood the meaning of my question immediately preceding the last. I will repeat it: Without having ever before seen him, and, of course, without knowing what his manner in conversation was habitually, how are you able to tell that his manner upon that occasion was not his usual manner?

Answer. I thought I understood that question, and I have answered it. I would be glad to have my attention called to anything in that question that I have not answered.

Question. What the accused wants to know is, how it was possible for you, who never before had seen him or conversed with him until this occasion, to have known that his manner of conversation then was not his usual manner?

Answer. I presume his manner and conversation then, when he spoke of other matters than in regard to those connected with our moving back to Alexandria, and with regard to the care of the wounded at Kettle Run, was his usual manner; but I have no means of knowing whether or not it was his usual manner. There was nothing in that connection that showed the tone I spoke of. While this tone and manner that I speak of was more distinct in regard to these two points I have mentioned, I do not wish to be understood as saying that I did not receive the same continuous impression all through the conversation, after the remarks about the ammunition, in regard to the character of the man. Of course, I cannot remember distinctly about that.

Question. Do you know what became of the ammunition that he had called for?

Answer. No, sir.

Question. Where did you leave it?

Answer. I sent it forward from the station on the railroad. Each driver, as he went forward, was instructed that that was for the corps of General Porter, I suppose. This station was just beyond a bridge over this run, I think [pointing to the map]. There was no regular station there. The reason the ammunition was at the point I speak of was because the bridge there had been burned by the enemy, and we could get the ammunition no farther toward Manassas than that point. It was stopped, therefore, at the head of the ravine that led down to the bridge across that run, which, I think, was Kettle Run.

Question. Have you any knowledge that the accused received the ammunition, and, if you have, at what time did he receive it?

Answer. I have no knowledge that he ever received it.

Question. Have you any knowledge that he did not receive it?

Answer. I have a knowledge from what he told me, that he had not received it at that time. He may have received it subsequently.

Question. The time to which you now refer is the time of the conversation?

Answer. Yes, sir.

Question. Then are we to understand you that you have no knowledge that he did not receive it at a subsequent period, or, if he did, when he received it?

Answer. He may have informed me on Sunday morning at Centreville that he had received it, but I do not remember that he did.

Question. Have you any knowledge of the immediate object he had in view, requesting that this additional ammunition should be sent to him?

Answer. No, sir; nothing more than I know that General Porter had reported when he came up that he had, I think, but 40 rounds to the man; that is, he reported that at Warrenton Junction to us, according to my recollection.

Question. You have stated, if your evidence is remembered correctly, that the accused said he had no persons to take charge of and distribute the ammunition, and requested officers to be sent?

Answer. I did not say that he requested officers to be sent to him. He said he had no officers for it. That was the first expression in his conversation which struck me as strange.

Question. Your have said, if understood correctly, that the whole of the enemy's forces, whilst the battle of the 29th of August was going on, was not on the field in front of the Union troops?

Answer. Yes, sir.

Question. What portion of the enemy's forces were in the rear on that occasion, as you supposed?

Answer. I believe, as far as we had information from spies, &c., that we had Jackson and Ewell in front of us there, and a part of Longstreet's force that came on to the field.

Question. Do you know what generals commanded the divisions of the army of the enemy?

Answer. I knew at the time, from information that we had. I do not know as I can remember them now. I myself examined a number of prisoners and deserters from time to time.

Question. Did Longstreet, so far as you know, command all the forces that were in the rear when the battle commenced on the 29th of August?

Answer. I supposed Robert E. Lee commanded the Army of Northern Virginia, which was the army operating against us.

Question. The question is, who immediately commanded the forces of the enemy in the rear—what general?

Answer. Robert E. Lee, I supposed.

Question. Was not General Longstreet there?

Answer. I do not know. I understood that General Buford counted a portion of the enemy that passed through Gainesville, which were all the re-enforcements that

got up for the enemy that day, I think. I cannot remember distinctly when he reported that, or how it came to us.

Question. Do you remember the number that General Buford reported?

Answer. No, sir; I do not even know at what hour of the day I heard that report; I do not know that I heard it until the next day.

Question. In saying that, as you understood, General Robert E. Lee commanded the army of the enemy, are you to be understood as meaning to say that he was in person in the battle of the 29th of August?

Answer. No, sir.

Question. Or in person commanded that portion of the army of the enemy that was in the immediate rear of Jackson and Ewell?

Answer. No, sir; I did not know that.

Question. Do you now know whether General Longstreet, with the forces under his immediate command, joined the enemy at that time, and on what portion of the enemy's lines?

Answer. No, sir; as I said before, all I can give is the impression derived from the appearance of the field in front of us as to where the enemy were and what their force was; that combined with such information as we had received of their movements the two or three days previous.

Question. If Jackson's corps was the one immediately in front of our forces, and of that portion of our forces commanded by the accused, and Longstreet's corps had united with Jackson's corps on his right, are you sufficiently acquainted with the character of the country, and the position in which the accused was with his corps, to be enabled to say that he could have, after that junction, attacked the enemy's right in flank and in rear?

Answer. From the general character of the country there, although I do not know the nature of the ground immediately between the Gainesville road and the right of the enemy, I infer that the corps of the accused could have moved up, its right joining with the forces engaged, and have flanked the enemy. This is not all an inference merely from the general character of the country. It is based, also, on the fact that that portion of the country over which, as I understand it, the corps of the accused would have moved upon the enemy, was sufficiently practicable to enable the enemy, as they did, to make a similar movement upon our left on the next day.

Question. Will you designate upon the map the exact direction, as near as you can, in which the enemy made the attack upon our left and in the rear?

Answer. [The witness indicated upon the map.]

Question. What time of the day, on Saturday, the 30th of August, was that attack made by the enemy?

Answer. That attack, the weight of it, was made about 4 or 5 o'clock in the afternoon; I think 3 or 4 o'clock. It would be pretty hard for me to tell the hours on Saturday; it was a pretty anxious day. My opinion about time, Saturday afternoon, I think, would be worth little, except the time after that attack commenced, when I could give a pretty good estimate of the time, and that is the way in which I judge. My impression is that we were fighting there about three or four hours—about two hours before they gave out, and could make no further impression on us.

Question. At the time of the attack of which you have spoken, what was the distance between the left of our lines and the right of the enemy's?

Answer. There was no distance. They were fighting face to face after the attack commenced. They kept swinging around; their fire kept coming in more and more on our flank, until at last it was right square on our flank. The last battery they planted was as much as a mile from where they commenced. There was no musketry

with that battery; their musketry had then given out. That was the last firing there was, the artillery fire. That battery raked over rather in the rear of the ridge, where the Henry house stands.

Question. What distance, or about what distance, had the enemy to march to make the attack on our flank, of which you have spoken, their right going around on our left, on Saturday?

Answer. I suppose it would certainly be several miles, making a circuit, as they would, to come in. Their movements were veiled by woods beyond the ridges there.

Question. Do you know what distance the accused would have had to have marched in order to carry out the order of 4.30 p. m. of the 29th, if he received it, and if he received it at 5 o'clock?

Answer. It would depend on where his corps was. It was about 5 miles from Manassas Junction to where the right of the enemy were at 5½ o'clock. I do not know where the accused was, and I cannot tell what distance he would have had to have marched.

Question. Do you know whether the enemy on that day occupied any part of the Manassas Gap Railroad; and, if you do, will you state what part?

Answer. No, sir. I know that their movements there were veiled somewhat in that direction on Friday, I believe. As I said before, I can only tell where all the weight of their fire was.

Question. Will you state, if you can, when the accused reported to General Pope on the morning of the 30th of August?

Answer. I do not know that I can state the exact hour; but my recollection is, that he reported quite early in the morning.

Question. Having stated that you had no knowledge of the accused personally until your interview with him on the 28th of August, and such as was obtained during that interview, which you say was some fifteen minutes long, are you to be understood now as thinking that you were justified in giving the opinion, and in now maintaining it—looking to the past history of the accused during the present war—that he was a traitor to the cause of his country?

Answer. I have as clear an opinion as I had at that time in regard to General Porter, although not as vivid. I think that General Porter was determined so far not to co-operate as to force us back to Washington—to compel us to give back. In using the expression that General Porter was a traitor, which I used to General Pope, I am not aware that I considered in my mind the term as meaning treason to the country, or whether I analyzed in my mind what his motives were, any more than I had gained, as I have said, the impression that he was indifferent to the fate of the campaign as regarded General Pope. In regard to the matter, I do not now remember that I then thought out or came to any conclusion as to whether it was general treason. The conviction on my mind was that he would fail General Pope. That failure had to do with his personal relations to General Pope, that is, that General Pope was to be made to fail in that campaign, because these expressions—this sneering, as I have termed it—were connected, as I have said, with these matters in regard to General Pope. I cannot say that I came at that time, or have now come, to any conviction that General Porter was a traitor to his country. That expression, as I used it at that time, must be taken with the context. In that point of view, I considered him a traitor; it was treason to fail to support the commanding general. I do not doubt that the expression "traitor" was a heated expression, used under excitement, and that the impression on my mind would have been expressed sufficiently by having said that he would fail General Pope.

Question. Was there anything in the words actually spoken by the accused in your interview with him, independent of the manner in which they were spoken, to lead you to the conviction that he was a traitor, or would act traitorously to General Pope? If there was, state what the words were, as near as you can recollect.

Answer. The first words were his indifference in regard to the distribution of the ammunition, saying he had no officers to send. Then his expression, showing that he

supposed it a settled matter that we were going back to Alexandria—were to be driven back—saying that it was just as well that the ammunition had gone where it belonged—in the direction where we were going. The expressions were of that kind. I cannot remember the exact words, but that was the substantial character of them. Those expressions, combined with the look and manner of the man, led me to that conviction; looked to me like those of a man with a crime on his mind. Those expressions attracted my attention, and probably led me to examine and look at the face and notice the eye and manner of the accused.

Question. Are you able to say now whether those expressions alone, without regard to what you supposed to have been the manner of the accused, would have led you to the opinion of the accused that you have stated?

Answer. I think the tone would have led me to that conviction. I cannot answer the question more distinctly than I have. The impression is all one. I will endeavor to make any further explanation if it is of any use.

Question. Are you to be understood as having said seriously that, if there was no human law to prevent it, you would have killed the accused, because of what had occurred at the interview of which you have spoken?

Answer. I am to be understood as having said that; that was the feeling I had at that time. I did not ride away from the accused with that feeling. I suppose it was aroused, perhaps, by the manner in which General Pope took my opinion in regard to the accused; I became more vehement, perhaps, and took a stronger expression.

Question. Will you state, as exactly as you can, what the accused said to you in relation to the sick and wounded?

Answer. I think his first expression was, that "it would hurt Pope, leaving the wounded behind." I then told him that they were not left behind; that positive orders had been given to General Banks in regard to it; that I had seen the order.

The examination by the accused here closed.

Examination by the COURT:

Question. In using the expression "traitor" in connection with General Porter, did the witness bear in mind the character of a traitor in connection with the definition of treason in law?

Answer. No, sir; it was, as I have said, a vehement, excited expression, founded on my conviction that General Porter was going to fail us; that it was his purpose to do so.

Question. Supposing that General Porter's corps had been at the junction of the Manassas Railroad with the road from Sudley Springs south, on the 29th of August, at 5 p. m., how long would it have taken that corps to have reached the right flank of the enemy, had it been moved with promptness and rapidity?

Answer. I have never been over the country at that point; I only know the general character of the country. I should say that that was about 3 miles from the right flank of the enemy; and I think, from the nature of the country, as far as I saw it, it could have been accomplished, with activity, in an hour.

The examination of this witness was here closed.

Whereupon the court adjourned to 11 a. m. to-morrow.

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WASHINGTON, D. C., *December* 12, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Rick-

etts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate General.

The accused, with his counsel, being also present.

The minutes of the last session were read and approved.

Maj. Gen. SAMUEL P. HEINTZELMAN was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state what is your position in the military service of the United States?

Answer. I am a major-general in the volunteer service.

Question. In what part of the State of Virginia were you, with your command, on the 27th of August last?

Answer. Near Warrenton Junction.

Question. What information have you in regard to the condition of General Hooker's supply of ammunition after the battle of Kettle Run, on the 27th of August?

Answer. A portion of his division was nearly out of ammunition.

Question. Was, or was not, that fact made known to Major-General Pope in the afternoon of the 27th of August?

Answer. Late in the afternoon it was.

Question. Have you, or not, any knowledge that this condition of things had been in any way communicated to the accused?

Answer. I have no knowledge on that subject.

Examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Will you state what was the condition of the road between Warrenton Junction and Bristoe Station on the evening of the 27th of August?

Answer. It was a narrow road, in tolerably good condition. A part of it ran through some woods.

Question. Were there any, and, if any, what, obstructions upon that road which would have impeded the movement of troops in large numbers?

Answer. They could only march in one line. There were a few little ditches that were bad crossing, and I think the road crossed the railroad, perhaps, once or twice; those crossings were bad. I do not recollect distinctly about the road; it was not a very good road, however.

Question. Will you state whether it was to any extent obstructed by wagons?

Answer. There was a large train of wagons behind us—a considerable obstruction.

Question. When you say that the wagons were behind your command, are we to understand that you mean to say that they were behind the command of the accused or in front of it?

Answer. They were in front of the command of the accused.

Question. Do you remember now what the character of the night was; was it light, or dark and rainy?

Answer. It was very dark. In the course of the night we had a drizzling rain. Our tents were not pitched; we lay out in the rain. We had difficulty in getting our wagons up.

Question. Will you state what difficulty you had in getting your own wagons up—how long you were engaged?

Answer. The night was very dark; our wagons did not come up until an hour or two, perhaps more, after night.

Question. What was your command at that time?

Answer. I commanded the Third Corps of the Army of Virginia, consisting of General Hooker's and General Kearny's divisions.

Question. Were you made acquainted by General Pope with, or did you know what were his plans?

Answer. I did not know what his plans were.

Question. Is your reply to the last question to be understood to refer to the knowledge you had on the 27th of August, or do you mean to include also the 28th and the 29th as days when you were not advised of his plans?

Answer. I had no full information of his plans. We had some discussion about what was to be done.

Question. From the discussion that you had, did you understand that the contingency might happen that would render it necessary for the Union army to retire behind Bull Run?

Answer. I knew that the enemy had possession of the railroad, and, of course, that we were obliged to fall back.

Examination by the accused here closed.

Examination resumed by the JUDGE-ADVOCATE:

Question. You spoke of a large wagon train. Was that the train attached to your command?

Answer. No, sir.

Question. Had the accused left Warrenton Junction at 1 o'clock on the morning of the 28th of August, would that train have been in his way or out of his way in marching to Bristoe Station?

Answer. I do not recollect distinctly; but I do not think the train had got in the next morning when we left.

Question. You spoke of the darkness of the night. It was not too dark, was it, for the march of troops along the road?

Answer. Not impossible for them to march; but there would have been a great many stragglers.

Question. There are stragglers in all night marches, are there not?

Answer. Yes, sir, certainly, more or less.

Examination by the judge-advocate closed.

Examination by the COURT:

Question. How far had General Porter's corps marched, on the 27th of August, before its arrival at Warrenton Junction?

Answer. I have no information on the subject.

Question. Was there but one route that troops could take in passing from Warrenton Junction to Bristoe Station?

Answer. I believe there was but one direct road; I am not well informed upon that subject.

Question. Was the railroad made use of in connection with the regular dirt road?

Answer. It was very difficult to march on the railroad in the night. Some of the rails were torn up, ties piled up on the track, culverts destroyed, and bridges burned.

Question. Was there, on the night of the 27th of August, a route of march practicable for General Porter's troops from Warrenton Junction to Bristoe Station, so far as you have knowledge of the country?

Answer. That would depend upon where the wagons were. There were places where the wagons would have entirely obstructed the road.

Question. Do you know where those wagons were?

Answer. I do not.

Question. Were there, or not, any repairs on the railroad between Warrenton Junction and Bristoe Station, between the time when you passed over it and 1 o'clock of the morning of the 28th?

Answer. I believe not.

The examination of this witness here closed.

Maj. Gen. IRVIN MCDOWELL called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state your position in the military service of the United States?

Answer. I am a major-general of volunteers, and a brigadier-general in the Regular Army, so called.

Question. Will you state the command you exercised in the Army of Virginia on the 29th of August last?

Answer. I commanded the Third Army Corps of the Army of Virginia.

Question. Was not Major-General Pope your superior officer on that day?

Answer. He was.

Question. State the nature of any order that you may have received from General Pope on the morning of the 29th, directed jointly and severally to yourself and General Porter, and the hour, so far as you remember it, of its receipt, and the position of your command at the time.

Answer. Early on the morning of the 29th, after directing Reynolds' division to co-operate with General Sigel's corps in a movement he was about to make against the enemy, I left for the purpose of bringing up the divisions of Generals King and Ricketts, who, I learned, were at or in the vicinity of Manassas Junction. On arriving at Manassas Junction, I met Major-General Porter's corps coming up, and saw Major-General Porter. Soon after, he showed me an order from Major-General Pope to himself, directing him to make a certain movement, and to take with him King's division. I am giving the substance of it merely. Some conversation took place between General Porter and myself concerning this order, I feeling some embarrassment at one of my divisions going off, as it seemed to me, under his command. He mentioned to the effect that as I was the senior officer, I naturally and necessarily commanded the whole, his force as well as my own, and with that understanding the division followed after his corps on the road that he was ordered to take, toward Gainesville, I think. Learning that General Ricketts' division was in the vicinity, I had it brought over to follow after King's division, King's and Ricketts' divisions, in the order named, being on the same road and following the corps of General Porter. I cannot tell the time of day nor the exact place when and where I received an order

from General Pope, addressed jointly to General Porter and myself; it was on the road leading from Manassas Junction to Gainesville. I have that order here, and will read it. It is as follows:

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29, 1862.

Generals MCDOWELL and PORTER:

You will please move forward with your joint commands toward Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies.

I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to join the other division of his corps as soon as practicable.

If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view—that the troops must occupy a position from which they can reach Bull Run to-night or by morning.

The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or the next day

My own headquarters will for the present be with Heintzelman's corps, or at this place.

JOHN POPE.
Major-General, Commanding.

That was the only order I received from General Pope that day.

Question. How did you regard that order—as placing General Porter in subordination to you, or as indicating that you were both to act independently of each other, and each of you in subordination to General Pope?

Answer. I cannot say that at that time the order occupied my mind in connection with the question of subordination or otherwise. In starting out on this road, as I mentioned before, General Porter had started out ahead of me, under the order he had himself received from General Pope to move with his corps and one of my divisions on a certain road, and, I think, for a certain purpose, though I am not certain as to that. At that time I conceived General Porter to be under me. When the joint order reached us, we were doing what that joint order directed us to do. That joint order found the troops in the position in which it directed them to be. That joint order gave a discretion to the effect that, if any considerable advantages were to be gained by departing from that order, it was not to be strictly construed. I decided that considerable advantages were to be gained by departing from that order, and I did not strictly construe it, or strictly carry it out. That order contemplated a line being formed which was to be joined on to a line that was to come up from the east to the west, and have the troops on the Gainesville road to attack the flank and rear of the enemy, as I understood it, in moving along on the Gainesville road. This long line of troops—those who were ahead of me, General Porter's corps—coming to a halt, I moved along, and rode by his corps to the head of the column. On the way up to the head of the column, I received a note from General Buford, addressed to General Ricketts, and to be forwarded to me. This note was addressed primarily to General Ricketts, and then to myself, for I do not think General Buford knew of General Porter's being there at the time he wrote it. I will read the note:

HEADQUARTERS CAVALRY BRIGADE—9.30 a. m.

General RICKETTS:

Seventeen regiments, one battery, 500 cavalry passed through Gainesville three-quarters of an hour ago, on the Centreville road. I think this division should join our forces now engaged at once.

JOHN BUFORD,
Brigadier-General.

Please forward this.

This was addressed to General Ricketts, who commanded a division. I do not know whether it went to General Ricketts direct or came to me direct, or came to me from General Ricketts. I infer it had reference to that division. General Buford belonged to General Banks' corps, but had been temporarily under my orders the day before, and had gone up to Thoroughfare Gap with Ricketts' division at the time I expected a force of the enemy to come through that gap; and he had fallen back with Ricketts, and at that time, as I understood, occupied a position to our left and front.

Question. Did you, or not, communicate to General Porter the contents of the note from General Buford which you have read?

Answer. Yes, sir; I did communicate it to him.

Question. Where was General Porter's command at that time?

Answer. On this road leading from Manassas Junction, by way of Bethlehem chapel or church, toward Gainesville. The rear of his column had passed by Bethlehem chapel, which is at the junction of the Sudley Springs road with the road from Manassas Junction to Gainesville.

Question. Bethlehem church enables you to identify that position?

Answer. Yes, sir; it is at the junction, or the crossing rather, a little beyond the crossing, of the Sudley Springs, or Gum Springs, or old Carolina road, with the road from Manassas Junction to Gainesville. The rear of General Porter's command was beyond that road, the head of it stretching out here in this direction [indicating on the map].

Question. Can you speak with any confidence as to the hour of the day at which you communicated to General Porter the contents of this note from General Buford?

Answer. It was somewhere before noon, I think. It is impossible for me to keep the hours of the day in my mind on such occasions. I have tried it several times, but have never succeeded except some important things, such as daylight and darkness. It was communicated a short time after it was received.

Question. Did you, or not, upon communicating this note, confer with General Porter in reference to his movements and your own?

Answer. I did.

Question. Will you state fully what occurred in that conference?

Answer. On passing the head of General Porter's column, which was on the road I have before mentioned, General Porter was in advance of the head of his column, I think, on a slight eminence or roll or rise of ground, with some of his staff near him. I rode up to him, and saw that he had the same order as myself—the joint order. Soon after, my attention was directed to some skirmishing, I think some dropping shots in front of us. The country in front of the position where General Porter was when I joined him was open for several hundred yards, and near, as I supposed by seeing the dust coming up above the trees, the Warrenton turnpike, which was covered from view by woods. How deep those woods were I do not know. It did not seem at that time to be a great distance to that road—the Warrenton turnpike. I had an impression at the time that these skirmishers were engaged with some of the enemy near that road. I rode with General Porter from the position he occupied eastward to the right, that is, the column being somewhat west of north, and I going east, made an angle with the line of troops on the road. The joint order of General Pope was discussed between us—the point to be held in view, of not going so far that we should not be able to get beyond Bull Run that night; that was one point; the road being blocked with General Porter's troops from where the head of his column was back to Bethlehem church; the sound of battle, which seemed to be at its height on our right toward Groveton; the note of General Buford, indicating the force that had passed through Gainesville, and, as he said, was moving toward Groveton, where the battle was going on; the dust ascending above the trees seeming to indicate that force to be not a great distance from the head of General Porter's column. I am speaking now of that force of the enemy referred to by General Buford as passing down the Warrenton turnpike toward Groveton. I understand this note of General Buford to refer to a force of the enemy. The question with me was how soonest, within the limit fixed by General Pope, this force of ours could be applied against the enemy. General Porter made a remark to me which showed me that he had no question but that the enemy was in his immediate front. I said to him, "You put your force in here, and I will take mine up the Sudley Springs road, on the left of the troops engaged at that point with the enemy," or words to that effect. I left General Porter with the belief and understanding that he would put his force in at that point. I moved back by the shortest road I could find to the head of my own troops, who were near Bethlehem church, and immediately turned them up north on the Sudley Springs road, to join General Reynolds' division, which belonged to my command, and which I had directed to co-operate with General Sigel in the movements he (General Sigel) was making at the time I left him in the morning. After seeing the larger part of my troops on the Sudley Springs road, I rode forward to the head of the column. I met a messenger from General Pope. I stopped him, and saw that he had an order addressed to General Porter alone. I do not recollect more than the general purport or tenor of that order. It was to the effect that he should throw his corps upon the right

flank or rear of the enemy from the position he then occupied. When I say right flank, I do so merely because of my knowledge of the position of the forces, not from any recollection of what that order contained on that point.

Question. Was, or was not, the messenger to whom you refer, who bore that order, a staff officer—Capt. Douglass Pope?

Answer. I do not recollect; I do not think it was.

Question. You did not meet on the way, or take from the hands of any other staff officer on that day, an order from General Pope to General Porter, except this one, did you?

Answer. No, sir; and I did not take this from his hands in one sense. I examined it, gave it back to him, and he went on his way.

Question. Is Captain Pope personally known to you?

Answer. Yes, sir; he is. My impression is that it was not Captain Pope, but I will not be confident. I do not remember who it was.

Question. I will read you an order which is set forth in specification 1st, of charge 2d. [The order was read accordingly.] Do you, or not, recognize that as the order which you saw and read?

Answer. I can only say that the order that I saw in passing was of that same import. Whether that was the order or not, I cannot say.

Question. You have said that the accused made an observation to you which showed that he was satisfied that the enemy was in his immediate front; will you state what that observation was?

Answer. I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply. The observation was to this effect (putting his hand in the direction of the dust rising above the tops of the trees), "we cannot go in there anywhere without getting into a fight"

Question. What reply did you make to that remark?

Answer. I think to this effect: "That is what we came here for."

Question. Were there any obstacles in the way of the advance on the part of General Porter's command upon the flank of the enemy?

Answer. That depends upon what you would call obstacles. A wood is an obstacle.

Question. I mean insuperable obstacles, in a military sense?

Answer. I do not think we so regarded it at that time. I did not.

Question. Was, or was not, the battle raging at that time?

Answer. The battle was raging on our right; that is, if you regard the line of the road from Bethlehem church to Gainesville to be substantially northwest, the battle was raging to the right and east of that line, at Groveton.

Question. At what hour did you arrive upon the battle-field with your command and take part in the engagement?

Answer. I cannot say as to hours.

Question. As nearly as you can.

Answer. It was in the afternoon. I do not know at what time the sun set. I should not be able to fix the hour. It may have been 4 o'clock or 5 o'clock. One of my divisions, which had been the day before up to Thoroughfare, and the day before that on a long march, extending to late in the night, and which had started that day, Friday, and had marched since 1 o'clock in the morning, had its rear guard some distance behind, and that rear guard did not get up to Manassas until the next morning, though it got within a couple of miles of that place. That was the rear guard of the corps; in that instance, a brigade.

Question. Did you, or not, afterward see General Porter during that engagement of the 29th?

Answer. No, sir; I did not.

Question. Did he, or not, with his command, take any part in that battle?

Answer. I do not know, of my own knowledge.

Question. What would probably have been the effect upon the fortunes of that battle if, between 5 and 6 o'clock in the afternoon, General Porter, with his whole force, had thrown himself upon the right wing of the enemy, as directed in this order of 4.30 p. m. of the 29th of August, which has been read to you?

Answer. Is it a mere opinion that you ask?

Question. Yes, sir.

Answer. I think it would have been decisive in our favor.

Question. Did any considerable portion of the Confederate forces attack General Pope's left on Saturday, passing over the ground that General Porter would have passed over had he attacked the enemy's right on Friday?

Answer. I cannot say. They may have done so. I do not know.

Question. All the localities of which you have spoken in your testimony are in the State of Virginia, are they not?

Answer. Yes, sir.

Examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Will you say whether you found General Porter's corps in the position where you expected to find it when you joined him the first time you saw him on the 29th of August?

Answer. I did not think anything about it; it was not a question with me.

Question. State if, when you found him at the place where the joint order required him to be, you stated to him, or thought, that you found in his front a different state of affairs than you had expected to find.

Answer. I do not recollect of such a statement.

Question. Try to recollect if, upon that occasion, you did not say to him, in substance, that he was too far in the front, and that the position in which he was was not a position in which to fight a battle, or anything to that effect?

Answer. I do not recollect.

Question. Are you sure you did not?

Answer. I have no recollection of any question about that place not being the one to fight a battle. Something may have been said about not going farther toward Gainesville, with reference to falling behind Bull Run that night.

Question. If anything was said in relation to the facility of getting back to Bull Run that night, do you remember whether it was that the accused was too far in the front, or would be too far in the front if he moved farther on?

Answer. It was hardly a question of going farther on. It was more a question of turning to the right and going against the enemy, then passing down the Warrenton turnpike.

Question. You say that something might have been said by the accused about getting back to Bull Run; are you to be understood as saying from recollection that he was told to keep in view his ability to get back to Bull Run?

Answer. That was the expression in the joint order.

Question. Was it used by you?

Answer. We referred to that point.

Question. When did you first see the order of which you have spoken in your testimony-in-chief, that of 4.30 p. m. of the 29th of August, which directed the accused to turn the right flank and attack the enemy in the rear? You have been understood as saying that that was the effect of the joint order. That is not your meaning, is it?

Answer. It was the effect of the joint order as modified by me, when I left General Porter, so far as I had the power to modify that order, and so far as the understanding with which I left him at the time.

Question. Are you to be understood as saying that before you saw the order to General Porter of 4.30 p. m. of the 29th of August, you, under the discretion you supposed was reposed in you by the joint order to yourself and General Porter, had directed him to attack the enemy's right flank and rear?

Answer. To that effect, yes, sir; I *knew* I had that discretion; I did not *suppose* it. This is the clause under which I *supposed*, if you prefer that term, I had that discretion: "If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out." That joint order contemplated General Porter's corps and my own to be employed differently from the way I had arranged when I left General Porter, which arrangement was to separate them, leaving him alone on the Gainesville road, whilst I went up the Sudley Springs road.

Question. Did you, under that joint order, suppose that you were authorized to take any part of General Porter's command, and place it in such a position that it would not have been in the power of his command to reach Bull Run that night or the following morning?

Answer. That question, if I understand it, did not come up in my mind. The order itself stated that one thing was to be held in view. I will read that part of the order. "One thing must be held in view—that the troops must occupy a position from which they can reach Bull Run to-night or by morning."

Question. Was it your understanding of that joint order of the 29th of August that you could, under that order, direct General Porter to take his command into a position from which that "one thing" could not be accomplished?

Answer. Certainly not. The order does not say that I should disobey the order, and that is what the question amounts to.

Question. Have you any recollection that, after you left the accused on the 29th, and took with you King's division, the accused sent a message to you, requesting that that division should be permitted to stay with his command?

Answer. I received no such message.

Question. Will you say whether, in consequence of a message, or otherwise, you sent a message to the accused, with your compliments, telling him that you were going to the right and should take King with you, and that he (the accused) should remain where he was for the present, and, if he had to fall back, to do so on your left?

Answer. I do not recollect.

Question. Are you able to say that you are certain that you did not send such a message?

Answer. That is my impression, that I did not.

Question. What distance did you march with that portion of your command which you took to the battle-field, from the point where you

left the accused to the point upon the battle-field that you reached with that portion of your command?

Answer. Somewhere about 4 miles.

Question. What road did you travel, or did you travel any route known as a road?

Answer. The troops went by the Sudley Springs road from Bethlehem church.

Question. When you left the accused where you found him on the 29th of August, were you at that time advised that Longstreet's corps, or any other corps of the Confederate army, was marching on to unite with the right of Jackson?

Answer. I did not know anything about Longstreet's corps or Jackson's corps. I have mentioned before that I received a note from General Buford that seventeen regiments, a battery, and 500 cavalry were marching from Gainesville upon Groveton. To whom they belonged, or to whom they were going, was not a matter of which I was informed.

Question. Do you know now whether the information given by General Buford in the note to which you have just referred was correct?

Answer. I know nothing more now than I knew then; I believed it then to be correct.

Question. Will you state if the force to which General Buford referred in his note actually passed through Gainesville at 30 minutes past 9 o'clock on the 29th of August, how long you suppose it would have taken it to have joined the force in front, which, as we have supposed, was commanded by Jackson?

Answer. It would depend upon how fast they marched.

Question. I know that.

Answer. I do not know how fast they marched, so I cannot tell.

Question. How long would it have taken them if they had marched as fast as you think they could have marched?

Answer. I have formed no estimate as to how fast those troops can march.

Question. If those troops, in fact, marched as fast as you have marched your own troops upon any occasion, how long would it have taken them?

Answer. To go from Gainesville?

Question. Yes, sir.

Answer. Without stop, without obstacles, formations, or checks of any kind, simply marching along the road?

Question. The question has reference to that country as it is, a distance of, as you say, about 4 miles.

Answer. It was somewhere between 4 and 6 miles. Troops march readily from two miles to two miles and a half an hour, if there is nothing to prevent them; if they are not disturbed by stopping up the roads with wagons, getting breakfast, or something of that kind.

Question. From your knowledge of the actual condition of the country over which that force was supposed to be passing, can you tell whether there were any obstacles to their march, and, if there were any, what were they?

Answer. Not having gone over the road, I do not know anything about the obstacles one way or the other.

Question. Do you know what was the average number of the regiments of the Confederates, each regiment, I mean?

Answer. Do you mean the strength of each regiment?

Question. Yes, sir.

Answer. They consisted of all the way from 200, or even as low as 150, up to 1,000 or even 1,200. I have taken a great deal of pains at different times in examining deserters, scouts, spies, negroes, and prisoners, to ascertain that matter, and I find that nothing varies so much as the strength of the regiments on the other side. I have the impression that they were not very strong; that their average was certainly not greater than our own, if it was as great; but that it varies at different times. Before they had their conscription, it was very low; after the conscription, their regiments were quite full. I have no personal knowledge of the matter at all. I give the sources from which I obtained this estimate.

Question. Have you a knowledge now of what was the actual force of the enemy under the command of Jackson, or did you know that Jackson was in command of the enemy?

Answer. I did not know that Jackson was there; I have been told that he was there. I do not know what his force was.

Question. And do you know, or not, what was the amount of the Confederate force that was coming up?

Answer. Coming up when and where?

Question. As stated in the note from General Buford.

Answer. Nothing more than he told me in that note.

Question. How long had you left the accused, on the 29th of August, when you saw the order dated at 4.30 p. m. of that day, which was handed you by some officer?

Answer. I cannot tell; I do not recollect. I rode from the head of his column back to the head of my own column, and as rapidly as I could get my troops into position on the other road, and waited until the larger part of them had entered upon that road. Then, on riding by them to go to the head of my column on the Sudley Springs road, I met this messenger. I cannot tell how long all this took. I cannot fix the time when I left General Porter, and, of course, cannot fix the time when I saw this messenger.

Question. How often during this campaign of General Pope in Virginia, of which you have spoken, had you seen the accused before you saw him on the 29th of August?

Answer. I had not seen him during that campaign before I saw him on the 29th of August.

Question. How long were you together during that interview of the 29th of August?

Answer. I cannot fix the exact time. We rode together some distance, perhaps a mile; perhaps it may have been more; I do not recollect now.

Question. Was it five, ten, fifteen, or twenty minutes?

Answer. Yes, sir.

Question. Which?

Answer. You may put it at fifteen minutes, or at twenty minutes.

Question. During that conversation, that interview, did the accused say anything, or do anything, from which you inferred disloyalty upon his part, or unwillingness to perform his duty under the command of General Pope?

Answer. No, sir; what he said was the reverse. He professed to have but one feeling, which was that for the success of his country. This was said, I think, in reference to the embarrassment which I have before alluded to, about General King's division going under him (General Porter). It was not a question with me about his loyalty or disloyalty; I never think of such things; what I mean is this: I assume everybody to be loyal; my suspicions do not run that way. The suspicion that persons who hold commissions as general officers in the army are disloyal does not occur to me.

Question. It is not recollected what you said in relation to the embarrassment you speak of growing out of King's division being under General Porter's command. Will you state what it was that you understood him to refer to?

Answer. The embarrassment was rather on my side than on his; the embarrassment I refer to was this: I came down to take King's division, and bring it up along with my other division, that is, with Reynolds' division, then engaged at Groveton. I found it with an order to go under General Porter in another direction; that was what produced the embarrassment. General Porter had nothing to do with that embarrassment. I may say that we were both embarrassed; I at finding one of my divisions under his command, and he at finding himself under my command. I do not know that "embarrassment" is the proper word to use; what I meant was that I found things different from what I expected to find. When I spoke of one of my divisions going under him, he suggested that I was the senior officer, as between himself and myself, and that I could take the command of the whole force—his corps and my own force—and we went forward at first in that way, before this joint order reached us. I did not go to that place expecting to find General Porter; I went there to find my own division, and I found General Porter there with an order to take one of my divisions under his command. That was not foreseen by the general-in-chief of that army, who was absent, and the matter was solved in the way I have stated, I commanding General Porter's corps and my own division. We then received the joint order, which directed the very things which we had ourselves done. The order was sent by General Pope upon the receipt of a note from me, in reference to this matter of my division.

Question. Do you know from what point King's division had marched on that day, or the day before, in order to get to the point where you found it on the 29th of August?

Answer. It had marched from some point or some place on the Warrenton turnpike, between Gainesville and Groveton, where it had an engagement with the enemy, back to Manassas Junction, having left, as I was informed by General Reynolds, about 1 o'clock on the morning of Friday, the 29th of August. It had been ordered the day before to march from Buckland Mills, which is beyond Gainesville, to Manassas Junction. Before it had reached Bethlehem church, it was ordered to move on to Centreville, in compliance with orders from General Pope, and had been sent from the road—or I do not know that it was on any road, but from the position where the order reached it—north to the Warrenton turnpike, and thence to move along that pike to Centreville. It had become engaged with the enemy in the evening, and then, as I have before stated, fell back the next morning, starting at 1 o'clock, as I understood from General Reynolds. These facts I learned on the morning of Friday, the 29th, from General Reynolds, who had been personally with King's division; had ridden over to it the night before.

Question. Do you recollect whether you informed the accused at that interview that General Ricketts had been driven from Thoroughfare Gap, and that General King had been driven from Gainesville, by the enemy?

Answer. I do not recollect having used such expressions; I recollect having informed him of the fact that General King's division, as I had learned from General Reynolds, had fallen back that morning, and also that General Ricketts' division had fallen back from Thoroughfare Gap. At the time I saw General Porter, I had not got up with either of these divisions; I found them after my interview with him.

Question. Did you then know that Generals Ricketts and King had met with the enemy, the one at Thoroughfare Gap and the other at or near Gainesville, and that they were then falling back in consequence of the enemy?

Answer. I knew they had met the enemy the night before, but at the time I met General Porter I knew nothing of the details of the engagements which they had had with the enemy, nor do I recollect having said to General Porter, or having known anything about the motives for General King's falling back to Manassas from this position on the road between Gainesville and Groveton. I have an idea that there was a question of supplies connected with the falling back from that point. General Reynolds had told me that he had told General King that he would be alongside of him in the morning. At the time I saw General Porter, the whole subject of the en-

gagements of the evening before, except the mere fact that there had been engagements was unknown to me; I mean the details in regard to those engagements.

Question. You have stated, or have been understood to have stated, that when you were with the accused on the 29th of August, the battle was going on, and you could hear it; will you state if you heard any other firing than that of artillery?

Answer. I do not recollect about that now; the noise was very decided, and distant from where we were, I should suppose, about 4 miles.

Question. Do you know now when the infantry firing on that day commenced; was it, or not, about 4 o'clock?

Answer. I think it was much earlier than that; I have only one thing to guide me, and that is General Reynolds' report; I can refer to that, and find out more particularly if it is desired.

The examination by the accused was here closed.

Whereupon the court adjourned to 11 a. m. to-morrow.

WASHINGTON, D. C., *December* 13, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, being also present.

The minutes of the last session were read and approved.

The examination of Maj. Gen. IRVIN MCDOWELL was then resumed, as follows:

Examination by the COURT:

Question. Did, or did not, General Porter put his troops in action at the point indicated by you at the time he said he could not go in anywhere there without getting into a fight?

Answer. Of my own knowledge, I know nothing of what General Porter did after I left him.

Question. In departing from a strict obedience to the joint order of the 29th of August, did you, or not, extend that departure beyond your own immediate command? That is, did you change the order with respect to General Porter's corps?

Answer. General Porter and I started out from Manassas with the understanding that, under the article of war applicable to such cases, I had the command of the whole force—his own and my own. We each of us received a joint order from General Pope, our then commander-in-chief, which order, whilst it did not at the time change the relations between General Porter and myself, seemed to imply that those relations were not to be constant—were not to continue. I decided under the latitude allowed in that order that General Porter should put his troops in to the right of where the head of his column then lay, and that I would take mine away from the road on which our two commands then lay, up the Sudley Springs road into the battle, in this way dissolving the joint operations of our two corps; and, from the moment I left General Porter, I considered he was no longer under my immediate control, or under my immediate command or my direct orders, but that he came under those of our common commander-in-chief, we not then being on the same immediate ground. The article to which I refer is the Sixty-second Article of War, which directs that, when troops happen to meet, the senior officer commands the whole. I considered that article of war to apply up to the time that I left General Porter and broke my command away

from his, after which I conceived that his relations were direct to the commander-in-chief; therefore, in answer to the question, to that extent I did interfere with his corps, by separating mine from it, and also by indicating where I thought his corps ought to be applied against the enemy.

Question. Did you report to General Pope any change you had made in the operation of that joint order?

Answer. No further than by bringing my troops up, reporting to him that they were there, and receiving his orders. His order to General Porter direct met me on my way to join the main army. I did not know at that time that General Pope was at that particular place.

Question. When you saw the order from General Pope to General Porter, the one subsequent to the joint order, did you give, or had you given, any order to General Porter which would interfere with his obedience to it?

Answer. None.

Question. The orders you had given to General Porter were not in opposition, or, at least, not of a different character, from the one that came to him from General Pope?

Answer. They concurred. The arrangements that I supposed to exist when I left General Porter concurred with the order which I afterward saw from General Pope to General Porter. They were to the same effect, except as to details, which General Pope may have given. I gave no details.

Question. Would, or would not, the presence of General Pope, an officer superior in command to both yourself and General Porter, render inoperative or inapplicable the article of war to which you have referred?

Answer. It would depend upon his presence, whether it was immediate or not.

Question. We speak of such presence as existed then.

Answer. We did not so consider it. General Pope, according to the note we received, was at Centreville, which I suppose was some 6 miles off, and we were going away from him. I will mention further that the day before nearly a similar case happened, when General Sigel and myself were together at Buckland Mills, and I commanded General Sigel. That was done by a direct order from General Pope, before given. Still, it would have been the same if he had not given that order.

Question. Could the accused have engaged in the battle according to your order, and according to the subsequent order of General Pope, and still have fallen back to Bull Run within the time named in the joint order to yourself and the accused?

Answer. Yes, sir.

Question. From your knowledge of the nature of the country between General Porter's column and the forces engaged on the 29th of August, was there anything to have prevented the accused from making an attack upon the enemy's right or rear, as directed by General Pope? If so, state what it was.

Answer. My knowledge of the country is derived principally, first, from having gone over the railroad from Manassas to Gainesville in a car, or on a locomotive, which gave me but little idea of it, as I was engaged whilst going over with matters which prevented my paying attention to the country; next, in marching from Buckland Mills to Gainesville, and from Gainesville east along the Warrenton turnpike for a mile or two—I do not remember the exact distance—then turning off to the right and south, and going across the country to Bethlehem church, and thence to Manassas; then from the fact that General Reynolds' division, which had the lead on the occasion that I refer to, going from Gainesville toward Groveton, had gone farther on that road than I went myself—had turned to the right, and gone toward Bethlehem church; and from the fact that General King's division, which had gone on that same road toward Groveton from Gainesville, and had turned down south of that road, had again gone north on to that road, had engaged the enemy at a certain place, had fallen

back to Manassas from that place, which place I learned was nearly reached, if not quite, on Friday, the day of the battle, by the troops moving from Groveton west, and from the fact that the enemy's force had moved to the south on Saturday, and turned our left on that day. These movements by these two divisions of my corps, my own movements, and the movements of the enemy, give me the belief that troops could move through the country comprised between the Warrenton turnpike and the Sudley Springs road and the road from Bethlehem church to Gainesville. I will mention, further, that that country is a mixture of woods, cleared ground, and hills, and that it is easy for troops to march without being seen or seeing the enemy.

Question. Does the country which you have just described include that over which General Porter was required to march in obeying the order of 4.30 p. m. from General Pope to attack the enemy?

Answer. Yes, sir. I would say that I do not know that order by that hour.

Question. Please state the ground on which you formed the opinion that if the accused had attacked the right wing of the rebels, as he was ordered, the battle would have been decisive in our favor.

Answer. Because on the evening of that day I thought the result was decidedly in our favor, as it was. But, admitting that it was merely equally balanced, I think, and thought, that if the corps of General Porter, reputed one of the best, if not the best, in the service, consisting of between twenty and thirty regiments and some eight batteries, had been added to the efforts made by the others, the result would have been in our favor very decidedly.

Question. Was there anything besides mere advantage in numbers from which that result would have followed?

Answer. And position.

Question. What particular advantage in position was there?

Answer. The position in which that force would have been applied, while the main body was so hotly engaged in front, would have been an additional powerful reason for so supposing.

Question. When the accused said to you that he could not go in anywhere there without getting into a fight, did he or not appear to be averse to engaging the enemy?

Answer. I cannot say that it made that impression on me, though, in giving my answer, I took the view that he did so imply, and made the remark; but I did not think he was averse to engaging the enemy. I mean by that, that that was not seriously a question with me, for when I left him I thought he was going to engage and would engage the enemy.

Question. Had General Porter taken part in the action of August 29, would you not have been likely to have known it?

Answer. I heard that he did fire some artillery, and I did not hear his fire; so that he might have gone into action without my knowing it at that time, because, where I was, there was a great deal of noise; and the noise that his engagement might have made might have been in a direction which would have confounded it with other noise.

Question. Up to what hour did the battle continue on that day, and how long was your command engaged in it?

Answer. It continued till after dark, or continued to such an hour in the evening when you could see the flash rather than the smoke. Of my command, part of King's division was actively engaged to the front for, I should think, something like an hour—it may have been more—before the battle terminated. I speak of the active collision. After my division got up, it was marched and countermarched, which caused it to lose some time before it could be applied. I had ordered it to go to the left of Reynolds' division, and it moved in that direction. Then orders came from General Pope for it to come back on the Sudley Springs road; then to go west along the Warrenton turnpike, after what I was informed was the retreating enemy.

Question. Please indicate, as nearly as you can upon the map, the point on the Gainesville and Manassas road at which you left the accused

on the 29th of August, when you proceeded with your command to the battle-field, and state whether or not, in the military sense of the term, he was then in the presence of the enemy?

Answer. [Referring to the map before the court.] I do not know that this map is altogether correct. It was made at my headquarters at Arlington; but, as far as I can recollect, the topographical engineer had much difficulty in locating some of these roads. I do not know that he has got them all down, or that he has them correctly laid down. I know there is a road that goes from Manassas Junction, intersecting the Sudley Springs road at a place near which there is a little chapel or church, called Bethlehem chapel, and goes along south of the Manassas Railroad to Gainesville. Whether the roads cross each other as laid down here I do not know. I left the head of my column with one brigade, I think, past Bethlehem church. General Porter's corps was on the road leading from Bethlehem church to Gainesville, and the rear of it was at a distance from Bethlehem church sufficient for the larger part, if not the whole, of one of my brigades to occupy that road. I should suppose his column occupied perhaps 3 miles of the road. A little in advance of the head of his column was where I left General Porter. I considered him then in the presence of the enemy.

Question. How long would it have taken General Porter to engage the enemy from the point at which you left him?

Answer. That is difficult to say. It did not, at the time, seem to either of us that it would require much time for the head of his column to become engaged. It would depend so much upon the dispositions he might make, and the dispositions the enemy might make, that it would be difficult to say. I should think that an hour would have been sufficient to have commenced an engagement, as things then appeared.

Question. What was the distance from the head of the column of General Porter to the right flank of the enemy at the time that you turned off on the Sudley Springs road; and was there or not time before dark for General Porter to have attacked and turned the right flank of the enemy, had he moved with promptness and rapidity, after having received the order of 4.30 p. m., or the order which the aide-de-camp of General Pope showed to you?

Answer. At the time that I turned off on the Sudley Springs road, I do not know how far the head of General Porter's column was from the right flank of the enemy. I do not know at what time he received the order named in the question as that of 4.30 p. m., or the one which the aide-de-camp of General Pope showed me. I do not know that it was an aide-de-camp of General Pope who showed me the order that I saw. If General Porter's head of column remained where I saw it when I left that head of column, and if it had turned off to the right at that time, or soon after that time, and moved with promptness and rapidity, I think it might have reached the enemy soon.

Question. When you left General Porter for the purpose of taking the Sudley Springs road, did you, or not, expect that he would attack the enemy as soon as he could reach them, and did you, or not, consider it his duty to do it?

Answer. I have already said as much, I think; at least, I meant to say it.

Question. Had the accused made a vigorous attack with his force on the right flank of the enemy at any time before the battle closed, would, or would not, in your opinion, the decisive result in favor of the Union army, of which you have spoken, have followed?

Answer. I think it would.

Question. From the time you separated from General Porter, on the 29th of August, how far did your troops march before engaging in the battle, and how long were they engaged in that battle?

Answer. The leading brigade of my troops was, I think, nearly, if not quite, its whole distance on the Gainesville road beyond the intersection of that road with the Sudley Springs road, near Bethlehem chapel. It marched back, and got on to the Sudley Springs road, and marched along the Sudley Springs road until it came near the

Warrenton turnpike. Some of the brigades then marched west, south of that turnpike, in compliance with orders that I gave them to engage on Reynolds' left. They were brought back from the place they had reached, which may have been the distance of the larger part of a mile, back to the Sudley Springs road. They then marched north on that road to the Warrenton turnpike, thence west on that turnpike a distance, perhaps, of about a mile. If the distance from Bethlehem church to the Warrenton turnpike be assumed to be 3 or 4 miles, then my troops must have marched, before they came in contact with the enemy, between 5 and 6 miles. I should think they were engaged for about an hour. I cannot measure the time. It is very difficult to do it under those circumstances; sometimes the hours go very fast; sometimes they go very slowly.

The examination by the court here closed.

Examination renewed by the ACCUSED:

Question. Do you know now, or did you know when you left the accused on the 29th of August, if what has been called in the testimony Longstreet's corps had joined the enemy on the right, how far that would have extended their line to the right?

Answer. I do not know.

Question. Was there, between their right and the command of the accused, any road over which he could have marched his command, in order to comply with the order of 4.30 p. m.?

Answer. I do not know that there was. I do not know that there was not.

Question. Do you know whether the order of 4.30 p. m. required the accused, for the purpose of executing that order, to take with him his batteries?

Answer. As I said before, I recollect only the general import and purport of that order, which was to the effect that General Porter was to make an attack where I supposed he was going to make it when I left him.

Question. You have stated, if correctly understood, that the corps of the accused was one of the best on the field, consisting of artillery about, as you supposed, of eight batteries, and that the effect of that corps, with those eight batteries, upon the right flank and rear of the enemy, would have changed the fortunes of the day. Do you mean to say now that the fortunes of the day would have been changed if he had made the attack without his batteries?

Answer. I believe it would.

Question. Do you know what was the number of his infantry?

Answer. I only knew this: that he had what used to be his own division (then Morell's) and Sykes' division of regulars. I have been told that he had more than that; I did not know it at the time. I had seen his corps defiled; I had passed along by it. I had not counted the regiments, but I gained a general impression of his corps in that way. It struck me very favorably. I had known the corps before. If you wish to know specifically if I knew the precise number of regiments, or the number of men, I did not know.

Question. Will you look at that order, dated 4.30 p. m., August 29, and set out in specification first of charge second, and say whether that order did not require the accused to use his batteries?

Answer. It so specifies: "Keep heavy reserves, and use your batteries."

Question. Now, as a military man, will you say to the court whether, if he had made an attack with his infantry and without his batteries, and had been defeated, he would not have been liable to the charge of having violated that order?

This question was objected to by a member of the court.

The accused stated, in support of the legal admissibility of that question, that upon various occasions, and in reference to various questions

touching the construction of the orders mentioned in the specifications, and touching the consequences of a compliance with or disobedience of those orders, military officers who have been examined as witnesses, have been asked by the judge-advocate and by the court, without objection on the part of the accused other than he supposed he would have the same privilege, what their opinions were.

The accused also states that, as far as any objection exists in the mind of any member of this court, or in the minds of the court, as to the relevancy of the facts which the question seeks to elicit, he proposes to show that the character of the country which must have been traversed in order to carry out the order stated to have been given by General McDowell (the witness under examination), to the accused on the 29th of August to turn the enemy's right flank and attack him in the rear, or the order of 4.30 p. m. of that day, was such that he could not have carried his artillery into action so as to comply with either of those orders.

He proposes, also, to prove that at the time he received the order of 4.30 p. m. from the commander-in-chief, the enemy's right, by the junction of the force of Longstreet with the original right, was so extended that he could not have complied with that order in time to have made the attack contemplated by that order.

He also proposes to prove, in connection with the same question, that, as he was then actually situated at the moment he received that order, the enemy were in his immediate front, and that, if he had attempted to have executed that order, he might have been cut off.

For these reasons the accused respectfully submits to the court his right to propound to the witness under examination the question objected to.

A member of the court said, that, as he understood the rulings of this court, all opinions of witnesses on the construction of orders, or on any matters that are actually before the court, would be inadmissible; for in that case the court are to judge. But all matter of opinion based on facts which the witness himself knew, and from which he drew his opinion as a collected judgment, which same basis of opinion is not possessed by the court, such opinions would be admissible.

The court was thereupon cleared.

After some time the court was reopened; whereupon the judge advocate announced that the court determine that the witness shall not answer the question.

Examination continued by the ACCUSED:

Question. You have stated what you suppose to have been the length of march made by that part of your command which was under your immediate command in order to get to the battle of the 29th as being some 5 or 6 miles, and you have stated generally the roads which your troops on that march traversed. Was their march made upon roads exclusively, or was any part of it, and, if so, what part of it, made through the country on either side of any of those roads?

Answer. It was not exclusively on roads, but the larger part of it was. It was on a road from Bethlehem church to near the Warrenton turnpike. It was not on a road, for those brigades which were sent from the Sudley Springs road across the country to operate on Reynolds' left, nor on roads coming back from that position to the Sudley Springs road. It was on roads the rest of the distance I have described.

Question. Was the country over which a portion of your troops marched, other than on roads, an open one or not, and what distance had they to march?

Answer. It was mostly open. About 2 miles, or perhaps less, was over a country mostly open, with some woods, some bushes, and fields, and fences.

Question. Will you state what, in your opinion, would have been the result of the battle of the 29th of August if the accused had attempted to execute the order of 4.30 p. m., to attack the enemy on his right flank and in the rear, if he (the accused) had been defeated?

Answer. To have defeated General Porter in that attack would have required a large force of the enemy, which would have relieved the attack in front, and, I think, would have still resulted in a success to our side—to our army generally.

Question. Then, are we to understand you as saying that a failure of the attack contemplated by the order of 4.30 p. m., had it been made, would not have materially affected the fate of the day?

Answer. I have stated that, even if the attack had been made and had failed, it only could have failed by a very large force of the enemy attacking it, and that would so much have relieved the front as to have gained a success for the army generally.

Question. Are we to understand you as saying that the battle of the 29th of August terminated at any particular hour of the night of the 29th; and, if so, at what hour of that night?

Answer. I do not think I have mentioned any hour.

Question. Can you now tell at what hour of that night it terminated?

Answer. No, sir.

Question. How long after dark?

Answer. It terminated at that time when the flash is seen rather than the smoke.

Question. Are you of the opinion that the Sixty-second Article of War placed the accused, when you joined him on the 29th of August, under your immediate command?

Answer. I think I stated that it was at the suggestion of the accused that I, as his senior, took command of his force and my own. Of course, it was only under the Sixty-second Article of War that I could do so.

Examination by the accused here closed.

Examination by the COURT:

Question. In your own movements on the 29th of August, had you artillery, and did your artillery, if you had any, move with your other troops?

Answer. Yes, sir.

Examination of this witness was here closed.

Whereupon the court adjourned until 11 a. m. on Monday next.

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WASHINGTON, D. C., *December* 15, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, also being present.

The minutes of the last session were read and approved.

The examination of Maj. Gen. IRVIN MCDOWELL was then resumed.

Examination by the COURT:

Question. From the extent of ground occupied by General Porter's corps, how many men had he, do you suppose?

Answer. Somewhere between 12,000 and 15,000; say 12,000.

Question. When you parted from the accused to proceed to your own corps, were you and he alone together, or did you observe other persons within hearing of your conversation?

Answer. We were not alone; some of my staff were with me, and I think some of General Porter's staff were with him. How near they were, whether they could hear or not, I cannot say.

Question. As you rode away, did you hear the accused address any observation to you in a raised tone of voice, as if calling after you to be heard?

Answer. I do not recollect hearing any such observation in a raised tone of voice.

Question. Can you recollect who of your staff were with you or in that immediate vicinity at that time?

Answer. I can give one name; and he, perhaps, can then state about the others better than I can. The staff were from me in such a way that it would be difficult for me to tell what particular persons were there at that particular time. I think Captain Cutting was with me. I know there were others. I could find out upon inquiry; but at this moment I am not able to give the names.

Question. During the conversation which you had with the accused, in which you mentioned to him your direction that he should put his troops in, did you at the time suppose that other persons were within hearing of that conversation?

Answer. I think I have answered that question.

Question. The previous question related to the time of parting from General Porter. This relates to the time that you held this conversation?

Answer. The conversation in which I told him to put his troops in there was immediately before I left him.

Question. When you left him, were you both in the woods?

Answer. In which woods?

Question. In the woods which were near to the headquarters of the accused, on the opposite side of the railroad—the patch of woods there.

Answer. My impression is that I had not crossed the railroad when I left General Porter; that is my impression. I may have crossed it and come back. I paid no attention to those things at the time.

The examination of this witness was here closed.

The judge-advocate submitted in evidence the following, purporting to be a copy of a dispatch sent from General Porter to General Burnside, which was read:

WARRENTON JUNCTION, *August* 27—4 p. m.

General BURNSIDE, *Falmouth, Va.:*

I send you the last order from General Pope, which indicates the future as well as the present. Wagons are rolling along rapidly to the rear, as if a mighty power was propelling them. I see no cause for alarm, though I think this may cause it. McDowell moves to Gainesville, where Sigel now is. The latter got to Buckland Bridge in time to put out the fire and kick the enemy, who is pursuing his route unmolested to the Shenandoah or Loudoun County. The forces are Longstreet's, A. P. Hill's, Jackson's, Whiting's, Ewell's, and Anderson's (late Huger's) divisions. Long-

street is said by a deserter to be very strong. They have much artillery and long wagon trains. The raid on the railroad was near to Cedar Run, and made by a regiment of infantry, two squadrons of cavalry, and a section of artillery. The place was guarded by nearly three regiments of infantry and some cavalry. They routed the guard, captured a train and many men, destroyed the bridge, and retired leisurely down the road toward Manassas. It can easily be repaired. No troops are coming up, except new troops, that I can hear of. Sturgis is here with two regiments. Four were cut off by the raid. The position of the troops is given in the order. No enemy in our original front. A letter of General Lee, seized when Stuart's assistant adjutant-general was taken, directs Stuart to leave a squadron only to watch in front of Hanover Junction, &c. Everything has moved up north. I find a vast difference between these troops and ours, but I suppose they were new, as today they burned their clothes, &c., when there was not the least cause. I hear that they are much demoralized, and needed some good troops to give them heart, and I think head. We are working now to get behind Bull Run, and I presume will be there in a few days, if strategy don't use us up. The strategy is magnificent, and tactics in the inverse proportion. I would like some of my ambulances. I would like also to be ordered to return to Fredericksburg, and to push toward Hanover, or with a larger force to strike at Orange Court-House. I wish Sumner was at Washington, and up near the Monocacy, with good batteries; I do not doubt the enemy have large amounts of supplies provided for them, and I believe they have a contempt for this Army of Virginia. I wish myself away from it, with all our old Army of the Potomac, and so do our companions. I was informed to-day, by the best authority, that, in opposition to General Pope's views, this army was pushed out to save the Army of the Potomac, an army that could take care of itself. Pope says he long since wanted to go behind the Occoquan.

I am in great need of ambulances, and the officers need medicines, which, for want of transportation, were left behind. I hear many of the sick of my corps are in houses on the road, very sick. I think there is no fear of an enemy crossing the Rappahannock. The cavalry are all in the advance of the rebel army. At Kelly's and Barnett's Ford much property was left, in consequence of the wagons going down for grain, &c. If you can push up the grain to-night, please do so direct to this place. There is no grain here or anywhere, and this army is wretchedly supplied in that line. Pope says he never could get enough.

Most of this is private, but, if you can get me away, please do so. Make what use of this you choose, so it does good.

F. J. PORTER.

After telegraphing, this dispatch will be sent to General Burnside.

The accused admitted that the paper just read was a dispatch he desired to send to General Burnside, but he did not know that it had been actually transmitted.

THEODORE E. MORELAND was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state to the court whether or not you were in the public service on the 27th of August last; and, if so, in what capacity?

Answer. I went down about the 20th of August as a telegraph operator, and to build the line out that way.

Question. Where were you on the 27th of August last?

Answer. I should judge I was about 20 miles beyond Fredericksburg.

Question. Will you look at this dispatch [handing witness one submitted in evidence by the judge-advocate and read this morning], and say whether or not you have any recollection of having sent it?

Answer. [After examining dispatch.] I sent that message.

Question. Was, or was not, the original in the handwriting of the accused?

Answer. Yes, sir; I should think it was.

Question. What disposition was made of the original?

Answer. General Porter requested that it should be handed to the officer, a major,

I believe, who brought it down, to have it sent by mail to General Burnside at Falmouth, and I delivered the original to him.

Question. And, in consequence of that, the original was not retained by you?

Answer. No, sir; it was not.

Examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Do you recollect [handing witness original of dispatch] that particular part of the telegram as having been transmitted by you?

The portion referred to was read as follows:

Don't let the alarm here disturb you. If you had a good force, you could go to Richmond. A force should at once be pushed on to Manassas, to open the road. Our provisions are very short.

Answer. No, sir; I do not know as I do remember that, though I may probably have sent it.

Question. Can you state that there is any particular passage of that dispatch that you specially recollect having transmitted to General Burnside?

Answer. Yes, sir; where General Porter says that he can make what use of this dispatch that he pleases.

Question. You remember that?

Answer. Yes, sir.

Question. Did you, at any time, convey an intimation to the accused from General Burnside to the effect that General Burnside desired the accused to send him information by telegraph from time to time?

Answer. No, sir.

Question. Will you look at that paper [handing paper to witness], and say if it be the order of General Pope which is referred to and commented upon in the telegraphic message which has just been proved and placed upon record, and which was transmitted at the same time with the dispatch?

At this stage of the proceedings, the president of the court said that this court-martial had, up to this time, been pursuing a course never heretofore practiced by courts-martial, viz, the allowing the counsel for the accused to themselves address the court, being satisfied that it had tended, in many respects, to produce delay, he (the president of the court) was desirous of returning to the usual and established practice of courts-martial, and have the accused himself address the court.

The accused said that he hoped this court-martial would continue the practice heretofore adopted by it. He was ignorant of a large portion of the forms and technicalities of law, and unable himself to conduct his own case. Should this court determine to return to the old practice, he would necessarily be compelled to resort to the old system of writing out all his interrogatories to witnesses before submitting his questions to them. That, he thought, would produce a great deal more delay than is now experienced. He believed the course now being pursued had conduced to a more rapid execution of the work before the court, and probably to the better administration of justice. He certainly had no desire to delay the proceedings in any way, and was as anxious as the court could be to do all that would enable it to speedily complete the business before it. He desired, as he knew the court desired, to have the truth brought out by this trial. But he was satisfied that, should the court

return to the old custom, a great deal more delay would be the result than by following the course this court had hitherto adopted.

The accused further submitted (through his counsel, by permission of the court) that he had been advised by his counsel to accede to the proposition made by the judge-advocate at the commencement of this trial, to depart from the usual custom of courts-martial, as appearing to them to be likely to conduce to a more enlightened administration of justice. His counsel had attributed this departure from the usual custom to the perhaps unexampled fact that this court-martial had had the opportunity to reduce to writing all oral statements with the same rapidity with which the oral statement itself was made. This, within their knowledge, had never before been the case. It combined the exactness of written statement with all the facility of oral statement, and to them appeared to be a great and substantial advantage over the old custom. Heretofore, as his counsel supposed, the practice of courts-martial, in requiring all statements and suggestions to be reduced to writing before the same were submitted to the court, was with a view to perfect exactness and regularity of procedure. The old practice was waived by this court-martial solely by reason of the fact that a stenographer of acknowledged eminent ability had been produced by the judge-advocate, with the consent of the court, at the commencement of this trial, in order to facilitate the execution of the labors before them.

The accused further suggests for the consideration of the court, that his counsel advise him that they fear, should the court return to the old practice, they will often be under the necessity of consuming the time of the court while they prepare in writing the questions they desire the accused to propound to the witnesses under examination. While his counsel deem it is not necessary for them to assure the court that they will use all possible haste, and delay the court as little as possible, they fear great detention will unavoidably result from a resort to the old practice of courts-martial.

The court was thereupon cleared.

After some time the court was reopened, and the judge-advocate announced the decision of the court to be that the questioning of witnesses should continue as heretofore by this court-martial; but the counsel for the accused should address no argument to the court but by express permission from the court.

The examination of the witness upon the stand (Theodore E. Moreland) was resumed by the accused.

Question [repeated]. Will you look at that paper [handing paper to witness], and say if it be the order of General Pope which is referred to and commented upon in the telegraphic message which has just been proved and placed upon record, and which was transmitted at the same time with the dispatch?

Answer. [After examining the paper.] I believe that is the same order that accompanied the dispatch.

The paper was then read as follows:

GENERAL ORDERS, } HEADQUARTERS ARMY OF VIRGINIA,
No. —. } *Warrenton Junction, August 27*, 1862.

The following movement of troops will be made, viz:

Major-General McDowell, with his own and Sigel's corps and the division of Brigadier-General Reynolds, will pursue the turnpike from Warrenton to Gainesville, so as to reach Gainesville, if possible, to-night.

The army corps of General Heintzelman, with the detachment of the Ninth Corps, under Major-General Reno (General Reno leading), will take the road from Catlett's Station to Greenwich, so as to reach there to-night or early in the morning. Major-

General Reno will immediately communicate with Major-General McDowell, and his command, as well as that of Major-General Heintzelman, will support Major-General McDowell in any operations against the enemy.

Maj. Gen. Fitz John Porter will remain at Warrenton Junction till he is relieved by Major-General Banks, when he will immediately push forward with his corps in the direction of Greenwich and Gainesville, to assist the operations on the right wing.

Major-General Banks, as soon as he arrives at Warrenton Junction, will assume the charge of the trains, and cover their movement toward Manassas Junction. The train of his own corps, under escort of two regiments of infantry and a battery of artillery, will pursue the road south of the railroad, which conducts into the rear of Manassas Junction. As soon as all the trains have passed Warrenton Junction, he will take post behind Cedar Run, covering the fords and bridges of that stream, and holding his position as long as possible. He will cause all the railroad trains to be loaded with the public and private stores now here, and run them back toward Manassas Junction as far as the railroad is practicable. Wherever a bridge is burned so as to prevent the farther passage of the railroad trains, he will assemble them all as near together as possible, and protect them with his command until the bridges are rebuilt. If the enemy is too strong before him before the bridge can be repaired, he will be careful to destroy entirely the train, locomotives, and stores, before he falls back in the direction of Manassas Junction. He is, however, to understand that he is to defend his position as long as possible, keeping himself in constant communication with Major-General Porter on his right. If any sick, now in hospital at Warrenton Junction, are not provided for and able to be transported, he will have them loaded into the wagon train of his own corps (even should this necessitate the destruction of much baggage and regimental property), and carried to Manassas Junction. The very important duty devolves upon Major-General Banks. The major-general commanding the Army of Virginia feels assured that he will discharge [it] with intelligence, courage, and fidelity.

The general headquarters will be with the corps of Major-General Heintzelman until further notice.

By command of Major-General Pope:

GEO. D. RUGGLES,
Colonel and Chief of Staff.

The examination by the accused was here closed.

Examination resumed by the JUDGE-ADVOCATE:

Question. Will you look at the paper now submitted to you [handing paper to the witness], dated "Bristoe, 6 a. m., 29th," addressed to General Burnside, and which purports to be a dispatch sent by the accused to General Burnside, and state if you know anything in regard to its having been sent over the telegraphic wires?

Answer. [After examining the paper.] I think I read that message. It was brought down to the office. I cannot say positively that I sent that message over the wires.

Question. Was it, or not, in the handwriting of the accused?

Answer. That I do not remember.

Question. Are you, or not, certain that it was sent over the wires by any one of the operatives engaged by the Government?

Answer. I have no recollection of having seen it sent over the wires.

The paper was handed the accused, who, after examining it, said that he had but two dispatches sent by him to General Burnside, which two were sent to him by General Burnside not long since, and when the court desired them, he (the accused) would produce them.

J. L. CHERRY was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. What position did you hold in the public service during the month of August last, and where were you engaged?

Answer. I held the position of telegraphic operator, and was engaged in putting up a telegraphic line from Falmouth in the direction of Culpeper.

Question. Look upon the paper I now show you [handing witness a paper], dated "Bristoe, 6 a. m., 29th," addressed to General Burnside, and purporting to be a copy of a dispatch sent by the accused to General Burnside on that day, and state what you know, if anything, in regard to its having been sent over the wires.

Answer. [After examining the paper.] I think that dispatch was sent.

Question. Did you, or not, see the original?

Answer. I think I did.

Question. Have you any recollection as to whether or not it was in the handwriting of the accused?

Answer. I thought so at the time.

Question. Have you, or not, seen enough of General Porter's handwriting to enable you to judge of it and determine whether this was in his handwriting or not?

Answer. Yes, sir; I think I have.

Question. Have you, or not, any recollection of the rank or name of the officer who bore this dispatch to the office?

Answer. I think it was a private that brought it; an orderly.

Question. Do you, or not, think it was sent on the day of its date?

Answer. I cannot say.

The dispatch was then read as follows:

[Received 5.30 p. m., August 29, 1862.]

FALMOUTH, VA., *29th*—5¼ p. m.

General H. W. HALLECK,
General-in-Chief:

The following message has just been received:

BRISTOE, *29th*—6 a. m.

General BURNSIDE:

Shall be off in half an hour. The messenger who brought this says the enemy had been at Centreville, and pickets were found there last night.

Sigel had severe fight last night; took many prisoners; Banks is at Warrenton Junction; McDowell near Gainesville; Heintzelman and Reno at Centreville, where they marched yesterday; Pope went to Centreville with the last two as a body guard, at the time not knowing where was the enemy, and when Sigel was fighting within 8 miles of him and in sight. Comment is unnecessary.

The enormous trains are still rolling on, many arrivals [animals] not having been watched [watered] for fifty hours; I shall be out of provisions to-morrow night; your train of 40 wagons cannot be found.

I hope Mac's at work, and we will soon get ordered out of this. It would seem from proper statements of the enemy that he was wandering around loose; but I expect they know what they are doing, which is more than any one here or anywhere knows.

Just received the following order:

"HEADQUARTERS ARMY OF VIRGINIA,
"*Near Bull Run, August* 29, 1862.

"Major-General PORTER:

"General McDowell has anticipated [intercepted] the retreat of Jackson; Sigel is immediately on the right of McDowell.

"Kearny and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville at the first dawn of day with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

"GEO. D. RUGGLES,
"*Colonel, &c.*"
[F. J. PORTER.]

A large body of enemy reported opposite. I am preparing, and will hold the place until the last. The only fear I have is a force coming from Manassas Junction.

A. E. BURNSIDE,
Major-General.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. State, if you have any recollection, whether you sent a message to the accused, and, if so, when, that General Burnside requested that the accused should give him any information he had of what was going on.

Answer. General Burnside often asked me whether I had any information from the Army of Virginia, that is, General Pope's army. I wrote a note to General Porter, requesting him to send all information he could gain, for the benefit of General Burnside.

Question. Where was General Burnside at that time with his own corps?

Answer. At Falmouth.

Question. Where was your telegraph station—near General Burnside?

Answer. I should think 15 or 20 miles from General Burnside's headquarters

Question. Will you state whether the request of General Burnside, which you communicated to the accused by a message, was communicated to the accused before the date of the dispatch to which you have just testified?

Answer. I do not remember.

Question. Will you state whether you received from the accused, to be transmitted to General Burnside, any message after the message dated "Bristoe, 29th, 6 a. m.," to which you have testified?

Answer. I am not positive, but I think I did.

Question. If any, can you tell how many?

Answer. I cannot.

The accused stated that until the purpose was stated for which those messages were offered, he must object to them as irrelevant.

The judge-advocate said that he thought the purpose was very obvious. It was simply to show the *animus* of the accused toward his commanding general at and about the time the acts of disobedience on the part of the accused are alleged to have taken place. The judge-advocate thought these dispatches would furnish most important light to enable the court to give a true interpretation to the alleged acts of disobedience, and also to properly understand their spirit.

The accused withdrew his objection.

Examination of the witness resumed by the JUDGE-ADVOCATE:

Question. Will you look at the paper I now show you [handing witness a paper], and which purports to be a copy of a dispatch from the accused to Major-General Burnside, dated "From advance, 11.45 p. m.," and state what you know, if anything, in regard to its having been transmitted over the wires?

Answer. I sent that dispatch, or one so near like it that I cannot tell the difference.

Question. Do you, or not, remember whether the original was in the handwriting of the accused?

Answer. I do not remember.

Question. Do you recollect the rank or the name of the officer by whom it was brought to your office?

Answer. I believe it was a private—an orderly. I do not recollect his name.

The dispatch was then read as follows:

[Received August 27, 1862.]

UNITED STATES MILITARY TELEGRAPH,
From Advance—11.45 p. m.

Major-General BURNSIDE:

Have just received orders from General Pope to move Sykes to-morrow to within 2 miles of Warrenton, and to call up more to same point, leaving the fords guarded by the cavalry. He says the troops in rear should be brought up as rapidly as possible, leaving only a small rear guard at Rappahannock Station, and that he cannot see how a general engagement can be put off more than a day or two. I shall move up as ordered, but the want of grain, and the necessity of receiving a supply of subsistence, will cause some delay. Please hasten back the wagons sent down, and inform McClellan, that I may know that I am doing right. Banks is at Fayetteville; McDowell, Sigel, and Ricketts at and immediately in front of Warrenton; Reno on his right; Cox joins to-morrow, Sturgis next day, and Franklin is expected. So says General Pope.

F. J. PORTER,
Major-General.

Question. Will you examine the paper now shown you [handing witness a paper], and say if you have any recollection of having sent it over the wires?

Answer. [After examining the paper.] I remember sending that dispatch, all but the first sentence, ending with the word "bosh." I have no recollection of having sent that, although I may have sent it.

Question. Have you, or not, any decided impression as to whether that sentence was in the message as you sent it?

Answer. I have not. I have no recollection of ever sending that sentence.

The paper was then passed to the accused, who, after having read it, said that he admitted having sent that dispatch to General Burnside, and was satisfied, upon now reading the paper, that the sentence not remembered by witness was a part of the dispatch he (the accused) had sent.

The dispatch was then read as follows:

[Received 1 p. m.—Cipher.]

FALMOUTH, *August* 29, 1862—1 p. m.

Maj. Gen. H. W. HALLECK,
General-in-Chief:

The following just received from Porter:

FOUR MILES FROM MANASSAS, *the 28th*—2 p. m.

Maj. Gen. GEORGE B. MCCLELLAN, *Alexandria:*

All that talk of bagging Jackson, &c., was bosh. That enormous gap, Manassas, was left open, and the enemy jumped through; and the story of McDowell having cut off Longstreet had no good foundation. The enemy have destroyed all our bridges, burned trains, &c., and made this army rush back to look at its line of communication, and finds us bare of subsistence. We are far from Alexandria, considering the means of transportation. Your supply train of 40 wagons is here, but I can't find them. There is a report that Jackson is at Centerville, which you can believe or not. The enemy destroyed an immense amount of property at Manassas, cars and supplies. I expect the next thing will be a raid on our rear by way of Warrenton by Longstreet, *who was cut off.*

F. J. PORTER,
Major-General.

This is the latest news.

A. E. BURNSIDE,
Major-General.

The examination of this witness was here closed.

Col. SPEED BUTLER was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state what position you hold in the military service of the United States?

Answer. I hold the position of additional aide-de-camp in the United States Army, with the rank of colonel.

Question. What part, if any, did you take in the campaign of the Army of Virginia, in the month of August last?

Answer. I was connected with the headquarters of General Pope, as an aide, and acted in different capacities during that campaign.

Question. Where were you during the 30th of August last?

Answer. I was at Centreville, in charge of headquarters there.

Question. What portion, if any, of the command of the accused arrived at Centreville that day, and at what hour did they arrive?

Answer. General Griffin's brigade and General Piatt's brigade arrived there that day. General Griffin's brigade arrived there about 11 o'clock on the morning of the 30th. General Piatt's brigade arrived there some time after that, on the same morning.

Question. Do you, or not, know from what point those forces had marched that morning?

Answer. General Griffin's brigade came from toward Manassas Junction. I did not notice what road General Piatt's brigade came upon into town.

Question. Had you, or not, any means of knowing from what point they had come? I mean the point they had started from that morning.

Answer. Only what I heard General Griffin say; which was, that he had come from Manassas Junction.

Question. Was there, or not, a battle during that day, the 30th of August, between the rebel forces and those of the United States, not far from Centreville?

Answer. There was.

Question. Was, or not, the sound of the artillery distinctly heard at Centreville?

Answer. Very distinctly.

Question. How long did the brigade of General Griffin remain at Centreville?

Answer. I could not state positively; I know it was there for three or four hours.

Question. Did that brigade, or not, take any part in the action of that day?

Answer. It did not.

Question. Do you, or not, know under what circumstances the forces under the command of General Piatt left Centreville, after their arrival there on that day?

Answer. I think the command of General Piatt made no halt at Centreville, but marched directly through the town toward the battle-field.

Question. Could you state with any certainty the hour at which the force under General Piatt left Centreville?

Answer. I cannot; I should suppose it was after 12 o'clock, some time.

Question. Up to what hour did the battle of the 30th of August continue?

Answer. I think some time after 5 o'clock; perhaps 4 o'clock in the evening.

The examination of this witness here closed.

The judge-advocate stated that there were no other witnesses in attendance, and there might be none for several days. Some of them were in active service in the field at this time, and others were at remote points, at which they had been telegraphed.

The court accordingly adjourned to 11 a. m. on Thursday next.

WASHINGTON, D. C., *December* 18, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

The joint note addressed to Generals McDowell and King, referred to in the testimony of Major General Pope, and set out on page 116 of the record, was admitted by the accused to be the note he sent to Generals McDowell and King, and the original on file before the court to be in his own handwriting.

Lieut. Col. FREDERICK MYERS was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state to the court in what capacity you served in the Army of Virginia, under Major-General Pope, during its late campaign in July and August last?

Answer. I was chief quartermaster to General McDowell.

Question. Where were you on the night of the 27th of August last?

Answer. I was with the trains of the army, about a mile and a half from where General Hooker had his battle on the 27th.

Question. Did you, or not, receive any instructions from General Pope, on that day, relating to your train along the road from Warrenton Junction to Bristoe Station? If so, state [what] they were.

Answer. I was ordered to move the trains in rear of General Hooker. Just before dark General Pope, with his staff, rode up, and I reported to him that General Hooker was in action ahead of me, and asked him if I should go into park with my trains. He replied that I could do so, or go on, as I thought best.

Question. What did you do? Did you go into park, or did you continue on?

Answer. I went into park, and gave directions to all the quartermasters to go into park.

Question. At what hour on the following morning were those trains upon that road put in motion?

Answer. The head of the train commenced moving just at daylight.

Question. What was the condition of the road between Warrenton Junction and Bristoe Station at that time, so far as regards the passage of wagons, artillery, &c.?

Answer. It was in excellent condition at that time.

Question. Do you remember the character of that night—the night of the 27th of August? If so, will you please state it?

Answer. I was up nearly all that night. It was quite dark; there was no moon.

Question. Did the night change in its character toward the morning, or was it the same throughout?

Answer. It was a dark night. I could not state about it toward morning particularly.

Question. In view of the condition of the road, as you have described it, and also the character of the night, was, or was not, the movement of troops along that road practicable that night?

Answer. I do not know of anything to hinder troops moving along the railroad there. There was a road running each side of the railroad. I should think it would have been easy for troops to move along there, although I may be mistaken in that.

Question. Where were you Saturday, the 30th of August, during the battle of Manassas, as I believe it is called?

Answer. I was at Centreville until about 3 o'clock in the afternoon, when I went to the battle-field.

Question. Did you, or not, see any portion of the command of the accused during that day; and, if so, where did you see them?

Answer. Right in the rear of where the headquarters trains were, and of the southern line of defenses there, right on the pike running from Fairfax Court-House to Gainesville or Warrenton. There was a body of troops passing around to the left, crossing the road. I rode out to see who they were. I met General Piatt, General Sturgis, and I am under the impression that I met some other general.

Question. General Griffin?

Answer. No, sir; I did not meet him at that time; I met him shortly afterward. I asked what troops they were, and they told me it was General Morell's division.

Question. Were, or were not, these troops moving in the direction of Centreville?

Answer. This was right at Centreville. All the trains were in camp in rear of Centreville.

Question. At what time in the day did you see these troops?

Answer. I should think it was about 11 o'clock in the morning.

Question. Was the sound of the artillery from the battle-field distinct at that point?

Answer. Yes, sir.

Question. Did you leave these troops there when you yourself went upon the battle-field?

Answer. No, sir; it was some time after that I went upon the battle-field.

Question. When you went upon the battle-field, were these troops still where you had seen them?

Answer. Not at that particular place. They had moved off in advance of Centreville, where the road forks. A portion of them were there; the artillery was there. I supposed they were the same troops, though I did not go the second time to see them.

Question. You did not see them march in the direction of the battle-field?

Answer. I saw some of them as I was coming back after dark. I met General Griffin.

Question. Where did you meet him?

Answer. Very near Cub Run Bridge, I should think.

Question. How far is that from Centreville?

Answer. About 2 miles from Centreville, on the road leading to the battle-field.

Question. Was the battle then over?

Answer. It was after dark. There was not much firing then.

Question. What was the distance from Centreville to the battle-field?

Answer. About 4 or 4½ miles.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Were your general orders to push forward your wagons as fast as possible toward Manassas?

Answer. I was ordered, in the first place, by telegraph from General Pope from Warrenton Junction to Warrenton, to take the trains to Warrenton Junction. After I arrived at Warrenton Junction, I reported to General Pope, and he ordered me to go on to Manassas. He stated that General Hooker was in the advance, and would act as protection to the trains.

Question. After being permitted to go into park with your wagons, why did you defer starting them until daylight the next morning?

Answer. We generally stop at night, in traveling, when we can. The teams were not unharnessed, but were ready to move at a moment's notice.

Question. They would have continued on if it had been daylight, I suppose?

Answer. If it had been daylight, and everything clear ahead.

Question. Then I understand that the state of the night was such, and the condition of the road was such, that you did not think it proper to start your wagons during the night, but waited until daylight?

Answer. That was not the reason I stopped. We had come about 20 miles that day, and that was about as far as we generally traveled in a day. I suppose I would have gone on if it had not been for the action taking place the afternoon before.

Question. Did all the wagons go into park, or did some continue on the road?

Answer. I think all my train went into park. The wagons were coming in all night; I could hear the wagons rolling nearly all night. No trains passed me that night.

Question. Do you know the fact that the road was clear of wagons in front of you and behind you, between Warrenton Junction and Bristoe Station, during that night?

Answer. There were no wagons whatever in front of me. I was with the head of the train. There might have been a great many in rear of me. That I could not tell about.

Question. You have been understood to say that the wagons were rolling all night?

Answer. Yes, sir; coming into park, as they got along, all night; the rear wagons take a long time to come up in a long train of 2,000 or 3,000 wagons.

Question. Then they were coming into park all night, from the road?

Answer. Yes, sir; wherever they could find a place to park, they parked.

Question. Do you know that there were other wagons coming on behind your train?

Answer. I do not know what wagons came on with the army called the Army of the Potomac; I can only speak about those with the Army of Virginia.

Question. Having spoken of the condition of the railroad, do you know its condition accurately at that time, from your own observation, between Warrenton Junction and Bristoe Station—what breaks there were, &c.?

Answer. I traveled over it several times in the cars, and on horseback with the wagons; not directly on the road when I was on horseback, but on the side of the road; on the road when in the cars.

Question. On the 27th?

Answer. I could [not] say as to the day; I speak of the day when General Hooker had his fight near Bristoe, whatever day that was.

Question. In passing over or near to the railroad, on the 27th of August, did you observe any breaks, any obstructions upon it, which would interfere with the movement of troops over it?

Answer. They burned the bridges there at Bristoe which was on ahead, and I am under the impression that the bridge at Cedar Run was burned; I could not state positively as to that; but that is my impression.

Examination by the accused was here closed.

Examination by the COURT:

Question. In your judgment, could trains have moved over that road that night, if it had been necessary to move them?

Answer. Yes, sir.

Question. Was there any reason, connected with the character of the night, why trains could not move on that road?

Answer. No, sir.

The examination of this witness was here closed?

Maj. S. F. BARSTOW was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Were you, or not, serving with the corps of Major-General McDowell in the Army of Virginia, during its late campaign in July and August last?

Answer. I was.

Question. In what capacity?

Answer. As assistant adjutant-general.

Question. Have you, or not, any recollection of the night of the 27th of August, being the night after the day on which the battle known as the battle of Kettle Run was fought by General Hooker's troops?

Answer. We moved from Warrenton to Buckland Mills on the afternoon of the 27th of August. We reached Buckland Mills about 9 o'clock in the evening, I think, or some time after dark.

Question. What was the character of that night?

Answer. That is more than I can tell; that is, of the whole night.

Question. As late as you were up.

Answer. About the time that we arrived at Buckland Mills there was a spit of rain, but it did not last long.

Question. As compared with other nights of the season, was it more or less unfavorable for the movement of troops?

Answer. I should like to add that we started before daylight the next morning; that is, I was out before daylight. We started about daylight, as I remember it. I have no vivid recollection of that night beyond other nights. It seemed to me to be very much like other nights on which we moved.

Question. Did you, or not, experience any difficulty in marching troops that night, up to the hour at which you encamped?

Answer. No, sir.

The examination of this witness here closed.

The judge-advocate stated that there were no other witnesses on the part of the Government present. If those who had been summoned should be present to-morrow, the case on the part of the Government, so far as he knew, he thought might be closed to-morrow.

The court thereupon adjourned to 11 a. m. to-morrow.

WASHINGTON, D. C., *December* 19, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

There being no witnesses in attendance, the court adjourned until 11 a. m. on Monday next.

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WASHINGTON, D. C., *December* 22, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

The judge-advocate said he had been unable to secure the attendance of a witness by whom he desired to prove the receipt, by the accused, of the order of General Pope, dated 8.50 p. m., August 29, 1862, in accordance with which order the accused had reported the next morning.

The accused admitted the receipt of the order referred to, but stated that he should introduce testimony to prove that the order was not delivered to him until 3.30 a. m. on the 30th of August.

Col. BENJAMIN F. SMITH was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state your position in the military service of the United States?

Answer. I am a captain of the Sixth Regular Infantry, and colonel of the One hundred and twenty-sixth Regiment of Ohio Volunteers.

Question. Will you state to the court whether you were serving with any part of the Army of Virginia, commanded by Major-General Pope, on the days of the 27th, 28th, 29th, and 30th of August last; and, if so, in what brigade and division?

Answer. I was serving in Colonel Chapman's brigade, of General Sykes' division.

Question. In what direction did that brigade march on Friday, the 29th of August last?

Answer. We had marched from Fredericksburg by way of Warrenton Junction, and arrived at Manassas Junction, I think, on the 29th of August, the day before the battle of Bull Run. We arrived exactly at the place where the railroad had been destroyed; the wreck of the train was there, and there we halted. Later in the day, in the morning, we retraced our steps to the branch railroad running, I think, toward Gainesville or Manassas Gap, and followed the direction of that road some few miles. We then halted on some rising ground, where we could see the country beyond, over

the woods, the tops of the trees. It was a wooded country. While we were halted there, a battery of the rebels opened upon us, but fired some three or four shells only, I think; there may have been a half a dozen. Our brigade then marched into a field, and the regiments were placed in order of battle. I recollect that General Morell's division was in our advance, on the lower ground. Some of our pieces replied to this rebel battery. I received permission from the commanding officer of my regiment to go to a more elevated piece of ground, a few rods distant, and while there I saw our batteries reply. A short time afterward (probably a half an hour) we received orders to retrace our steps, and march back in the direction we had come. We then marched back to near Manassas Junction, and camped in the woods alongside this branch railroad I have mentioned. That night I was placed on duty as the field officer of the pickets of Sykes' division. About daybreak the pickets were called in, and we marched toward the battle-field of Bull Run, and were engaged in that battle.

Question. What was the effect of the reply of your guns to this attack of the rebel battery?

Answer. It seemed to silence that battery, and it withdrew. At least that was the impression I had at the time.

Question. What amount of infantry force, if any, did there seem to be supporting this rebel battery?

Answer. I did not see them.

Question. Before you received orders to fall back and retrace your steps along this road, had or had not this rebel battery been completely silenced?

Answer. I think it had been.

Question. Were there, or not, at that time clouds of dust in view, showing an advance of the enemy?

Answer. Clouds of dust were distinctly visible farther over beyond the trees. Whether there were troops advancing or whether they were moving in another direction, I could not tell. I could see distinctly the clouds of dust, as if there was a large body of troops moving.

Question. Did you, or not, see the accused (General Porter) at the head of the column on that day?

Answer. No, sir; I do not recollect seeing General Porter at all that day.

Question. Did you, or not, see General McDowell that day?

Answer. I saw General McDowell before we arrived at the hill or rising ground I have spoken of.

Question. Do you, or not, know whether General McDowell had left the command before this engagement with the rebel battery took place?

Answer. I do not recollect about that.

Question. Will you state at what hour on that evening you arrived at your encampment near Manassas Junction?

Answer. It was some time in the afternoon, I think; I do not recollect distinctly.

Question. Was it nightfall?

Answer. No, sir; it was before night. I went on duty to post my pickets just at dark.

Question. Was there, or not, any such display of the enemy's forces as to make it necessary, in your judgment, to retreat before them?

Answer. I had no means of knowing. When we moved back from that position I supposed it was for some proper cause, but I did not understand at all what the cause was. I did not receive any impression that we were retreating from the enemy. I supposed that we were making a reconnaissance to feel the enemy in that direction, and, having found him, that we had moved back for some other purpose; and, not knowing about the orders to the general, I remained under that impression.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Do you recollect the road over which you marched the following morning—the 30th of August—going up to the battle-field?

Answer. Yes, sir.

Question. Was your camp near the junction of that road and the railroad?

Answer. Yes, sir.

Question. Was that road near to Manassas Junction?

Answer. I thought it was about a mile or two from the Junction.

Question. It was not at the Junction?

Answer. No, sir.

Question. Do you recollect Bethlehem church?

Answer. No, sir.

Question. By looking at the map do you think you could recognize the point where you were?

Answer. I might.

Question. Look at the map before the court, if you please, and point out the place, if you can.

Answer. [After looking at the map.] I recollect that where our brigade lay the railroad was in view, and also the road we took the next morning.

Question. According to the measurement upon the map, an inch to the mile, how far is that from Manassas Junction?

Answer. It is probably some 2 miles.

Question. When you say that the rebel battery was silenced, do you mean that it was incapacitated, or that it ceased firing and was withdrawn?

Answer. I thought it was withdrawn.

Examination by the accused here closed.

Examination by the COURT:

Question. At what time on the 27th of August did your division arrive at Warrenton Junction, and how far had it marched that day?

Answer. I am under the impression that we arrived there about noon; the time of the day is not fixed distinctly on my mind. I do not recollect the camp beyond Warrenton which we left; I might recall it by looking at the map. [Examining the map.] We marched from some point on this road [indicating on the map the road referred to] by Bealeton, and then down the side of the track to Warrenton.

Question. Was your brigade the leading brigade?

Answer. I do not recollect whether it led that day or not.

The examination of this witness was here closed.

Lieut. EDWARD P. BROOKS called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. What is your position in the military service?

Answer. I am a first lieutenant of volunteers in the Sixth Wisconsin Regiment.

Question. State to the court, if you please, whether or not you were serving with the Army of Virginia on or about the 27th of August last.

Answer. I was.

Question. In what place occupied by that army were you on the night of the 27th of August?

Answer. I was at Bristoe Station and at Greenwich.

Question. Do you remember the character of the night? If so, will you state whether it was of usual or unusual darkness?

Answer. It was not very dark—not so dark but what I could find my way through the woods.

Question. Was, or was not, the night of such a character as to offer any unusual difficulties to the march of troops?

Answer. It was not.

Question. What was the general condition of the road from Warrenton Junction in the direction of Manassas Junction?

Answer. It was very good.

Question. Did you have full opportunities of ascertaining the condition of that road on the night of the 27th of August?

Answer. Yes, sir.

Question. What opportunities did you have?

Answer. I traveled from beyond Warrenton to Warrenton Junction, from Warrenton Junction to Bristoe Station, and after arriving at Bristoe Station I went across the country to Greenwich.

Question. Have you, or not, frequently passed over that road?

Answer. Very often.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. At what hour did you leave Warrenton Junction?

Answer. About half-past 4 o'clock in the afternoon.

Question. At what hour did you reach Bristoe Station?

Answer. About 7 o'clock in the evening, I think.

Question. At what time did you start from Bristoe for Greenwich?

Answer. I started from Bristoe about 9 o'clock at night, and arrived at Greenwich at ten minutes past 12.

Question. Did you remain at Greenwich all night?

Answer. I did.

Question. What did you do at Greenwich?

Answer. I had a dispatch for General Kearny, and I was ordered by General Pope to remain and bring his force through the next morning.

Question. Did you do anything else?

Answer. Merely made the road secure by deploying infantry across the country.

Question. For what purpose was that done?

Answer. There were indications of rebel cavalry.

Question. Did you travel alone?

Answer. No, sir; I had an escort.

Question. Did you go to sleep while you were at Greenwich?

Answer. No, sir; I laid down once or twice, but General Kearny called me up before I got asleep.

Question. At what time did you lie down?

Answer. I think it was about 1 o'clock, and I laid about ten minutes the first time.

Question. Did it rain or sprinkle that night?

Answer. It sprinkled a very little just as I started from Bristoe, if I recollect aright.

Question. That is, early in the evening?

Answer. Yes, sir.

Question. You know nothing of the condition of the road that night between Warrenton Junction and Bristoe Station, or between Warrenton Junction and Kettle Run?

Answer. Only from having passed over it from Warrenton Junction.

Question. You knew nothing of its blocked condition—whether or not there were wagons upon it that night?

Answer. There were wagons upon it while I was passing over it from Warrenton Junction to Bristoe Station, but they were going into park at the time.

Question. From where were they coming?

Answer. They were coming from the direction of Catlett's Station into Warrenton.

Question. Was it moonlight or starlight that night?

Answer. It was starlight; there was no moon.

The examination of this witness was here closed.

Capt. W. B. C. DURYEA called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. What is your position in the military service?

Answer. I am assistant adjutant-general to General Duryea.

Question. Where were you and in what position on the 27th of August last?

Answer. We were on the march from Warrenton, and on the night of the 27th of August we halted, I should think, some 3 or 4 miles this side of Warrenton.

Question. At what hour of the night did you halt?

Answer. About midnight.

Question. In your march up to that hour, did you experience any unusual difficulties growing out of the character of the night?

Answer. No, sir.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Was the part of the road over which you passed obstructed by wagons or otherwise?

Answer. The march was very slow. I should think they halted every ten or fifteen minutes. It was a very tedious march.

Question. What caused the slowness of movement and the stoppages?

Answer. It is very hard for me to judge.

The examination of this witness was here closed.

The judge-advocate announced that he had no more witnesses to be examined.

Certified copies of the commissions of Maj. Gen. John Pope and Maj. Gen. Fitz John Porter, as major-generals of volunteers, were then sub-

mitted in evidence by the judge-advocate, read, and ordered to be filed, marked "Government Exhibit B, Nos. 1 and 2."

The prosecution here closed.

The accused said: I have a few remarks to make to the court before asking for a little time to enable me to enter upon my defense. I have made every effort possible to see my witnesses and to get in communication with them. I have failed in every instance. I have written to them. In some instances, my letters have reached them; in others, they have failed to do so. Their replies to me have reached me in only one instance. One of my own aides, whom I sent to the Army of the Potomac, has returned, but the letters that he sent to me some six or seven days since have not yet arrived. Those letters contain documentary evidence and information in relation to testimony that I desire to offer before this court.

I have also to add that the witnesses I desire to have summoned, with the exception, I think, of one or two now in town, have received no intimation whatever that they have been summoned. They are chiefly with the Army of the Potomac. In consequence of my inability to see my witnesses, my list is rather a large one, but I expect to be able to reduce it a great deal before the case is closed. The court must not be surprised, however, at the large number of witnesses I have given the judge-advocate. I have done so merely because I have not had an opportunity of seeing or communicating with any of them.

I have not yet been able to conclude my preparations to enter upon my defense. I therefore ask of the court a delay until Wednesday morning next. From that time forth I expect to be able to push matters forward.

The judge-advocate stated that the Government had issued summonses for some of the witnesses desired by the accused. It had, however, exercised its discretion in regard to others in active service, preferring to delay calling them from the field until they were actually needed here. He would make every effort now to have them sent for at once.

The court accordingly adjourned to 11 a. m. on Wednesday next.

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WASHINGTON, D. C., *December* 24, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; Col. J. Holt, Judge-Advocate General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

The accused then addressed the court as follows:

May it please the court: Certain telegrams have been presented to this court as evidence of a spirit by which it is supposed I was actuated toward my commanding officer, Maj. Gen. John Pope, during the time covered by the charges against me. Isolated as are those telegrams from all reference to surrounding circumstances, the orders accompanying them, or to any explanations, it is manifest that their true meaning and spirit can be but very imperfectly perceived.

In order that this court, in its search for truth and desire to administer justice, may be fully enlightened on all the points of evidence, and understand, in all their bearings, the relations these telegrams have to the subjects of investigation, I desire to present in this, the opening of my defense, all the telegrams and messages in my possession, and all the orders of Major-General Pope relating to the subject-matter of investigation, all of which I deem material evidence in my defense.

I present them in their chronological order, in that shape which I am confident will best enable the court to give the attention and consideration it desires and the subject merits.

I have reason to believe the Government is in possession of all my telegrams, and the telegrams of those who were in communication with me. I have striven to obtain from officers all I sent out—I retained no copies of them—for the purpose of using them in my defense. I have secured only two of the originals. One is now in possession of the court, remaining there because the one presented by the prosecution is an imperfect copy, a material concluding portion being omitted, doubtless by accident or inadvertence. The other I will furnish, as well as any others which I may become possessed of, or which the Government will produce.

I may be ignorant of what I have written, but whatever it may have been, I now unhesitatingly declare I will present in my defense any and all documents, if furnished me, which bear on the case. Whatever I may appear to have said in secret, I will here openly acknowledge and abide by. I have nothing to conceal.

I wish the court to bear in mind what I shall prove: that while I was on the Rappahannock, I was directly responsible to General Burnside and General McClellan for all my military acts; that, after reporting to General Pope, I was in communication with General Burnside, and, at his request, conveying to him information tending to aid him in his operations, and in securing his own forces, and the line of the Rappahannock, left unprotected by me, under orders from General Pope. And at the same time I was relying upon General Burnside for the only supplies which could keep alive my command. It will be seen that I was giving him information which I knew he was communicating to the Government, tending to make him feel secure, and which caused me, for one reason, to wish to be recalled to operate over the Rappahannock upon the rear of the enemy, the only vulnerable point, in my judgment, in which the enemy could be struck.

If the documents presented by the Government show my feelings and disposition, so do these before, during, and after the actions, and constitute material evidence in my case. I ask the court to maturely weigh and consider all this evidence, for evidence these documents must be, if the documents presented by the prosecution be evidence. Some of these papers have been proved.

As the witnesses appear, I will have the copies now presented identified.

I am now ready to go on with my case, reserving till the close of the whole evidence my entire defense.

Maj. Gen. JOHN G. PARKE was then called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state to the court the relations you bear officially to General Burnside, and your relations in regard to the telegram or

telegrams and communications received from me during the march from Fredericksburg around to the Rappahannock?

Answer. I was General Burnside's chief of staff, and the telegrams and messages passed through my hands, if not all of them, the greater portion of them.

Question. Will you state what opportunities you had of ascertaining my opinions and feelings, and of observing my acts while at Fredericksburg and beyond?

Answer. I was with General Burnside from the time of the arrival of General Porter's troops up to the time of their departure, and while on the road to join General Pope. In our intercourse with General Porter, he showed energy, activity, and enterprise, and a desire to push his troops as rapidly as possible to the army of General Pope.

Question. Where was I during the time that I was staying at Fredericksburg?

Answer. Your headquarters were at our own headquarters, and we were constantly in communication.

Question. Do you know anything of the state of my health at that time?

Answer. Yes, sir; you were an invalid; but that did not thoroughly incapacitate you for the discharge of your duties.

Question. Did it seem to have any influence at all upon my activity?

Answer. I think not.

The accused stated that he desired to have this witness identify the telegrams to which he (the accused) had referred in his opening, as they were mainly known to this witness.

The judge-advocate said that there was no doubt that those telegrams bearing date during the time of the transactions now under investigation were admissible as evidence, but he asked the court to determine whether those bearing date prior to those transactions should be received.

The accused said that the telegrams presented by the prosecution could be properly interpreted only by the information contained in those now offered. The telegrams presented by the prosecution were introduced to show the *animus* of the accused, and, in order to fully and properly ascertain that *animus*, the court should have before them, not merely isolated telegrams, but also those sent just before and just after.

The court was thereupon cleared.

After some time the court was reopened, and the judge-advocate announced that the court, in view of the body of the dispatches now offered in evidence by the accused as having been sent by him, covering dates from the 23d to the 31st of August, 1862, inclusive, determine that they will not receive any of said dispatches, except of the days of August 27, 28, 29, and 30, regarding the dispatches of those dates as parts of the *res gestæ*, in reference to which the dispatches of the accused have been given in evidence by the Government. All dispatches of those dates, relative to the issues to be tried, will be admitted.

The accused gave notice that he should submit, at the next meeting of the court, a protest against this decision.

Examination resumed by the ACCUSED:

Question. Do you recollect the dispatch I now show you as one that I sent to General Burnside [handing witness a paper which the accused stated was the original, dated Warrenton Junction, 4 p. m., August 27,

1862, an imperfect copy of which had been introduced by the prosecution]?

Answer. [After examining the paper.] Yes, sir; I recognize it as one that was received from you.

Question. Do you recollect this portion of it:

Don't let the alarm here disturb you. If you had a good force, you could go to Richmond. A force should at once be pushed out to Manassas, and open the road. Our provisions here are very scarce.

Answer. Yes, sir; I recollect that distinctly.

Question. Do you recognize this [handing witness a paper] as one of the dispatches sent by me?

Answer. I remember this dispatch.

The paper was then read, as follows:

BRISTOE, *August* 28, 1862—9.30 a. m.

General BURNSIDE, *Falmouth:*

My command will soon be up, and will at once go into position. Hooker drove Ewell some 3 miles, and Pope says McDowell intercepted Longstreet, so that without a long detour he cannot join Ewell, Jackson, and A. P. Hill, who are, or supposed to be, at Manassas. Ewell's train, he says, took the road to Gainesville, where McDowell is coming from. We shall be to-day as follows: I on right of railroad; Heintzelman on left; then Reno; then McDowell. He hopes to get Ewell, and push to Manassas to-day.

I hope all goes well near Washington; I think there need be no cause of fear for us. I feel as if on my own way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare, and we must make connection soon. I hope for the best, and my lucky star is always up about my birthday, the 31st, and I hope Mac's is up also. You will hear of us soon by way of Alexandria.

Ever yours,

F. J. P.

Question. Do you know what this paragraph in the dispatch just read refers to: "I feel as if on my own way now, and thus far have kept my command and trains well up?"

Answer. I presume it referred to the fact that from the time of General Porter's arrival at Falmouth, up to the time of his reporting to General Pope, he was under the orders of General Burnside, and that this was about the time that his command was transferred from General Burnside to General Pope.

Question. Was I at that time relying upon General Burnside for provisions, and getting them from him—the trains coming to me from General Burnside up to that time, and even after that time?

Answer. After General Porter's command left Falmouth, provisions were sent him as rapidly as we could get the wagons landed from the transports at Aquia, and pushed on to General Porter, until we were notified that it was not safe to send them without escort. As to dates, my memory is not sufficiently distinct to cover them.

Question. Who sent you that notice in regard to the want of safety to the trains; or did you receive any notice of the kind from me?

Answer. We received notice of that kind; I cannot state positively that it was from General Porter, but it must have been either from himself or from some officer of his command.

Question. Were these messages borne to you by persons of my own command, or persons of General Burnside's command sent up to me?

Answer. We sent with General Porter all the cavalry we had to spare, and those cavalrymen were returned to us at intervals, they bringing messages from General Porter.

Question. Do you know of any request, or any earnest desire expressed

by General Burnside, or any other parties higher in authority, for information to be sent from my command?

Answer. Yes, sir; dispatches were received from the President to the effect that communication with General Pope was cut off, and nothing was heard from him or of him, and that they had great anxiety to know what we knew of his command and situation.

Question. Do you know whether that was communicated to me or not?

Answer. I cannot say positively. It was natural that we should have communicated it, you being the channel of communication with General Pope's command.

Question. Would the telegraph operator in the advance be likely to know?

Answer. I should think he would.

Question. Do you know to what this expression refers, in the message from Warrenton Junction, dated 4 p. m., August 27: "I would like also to be ordered to return to Fredericksburg, to push toward Hanover, or with a larger force to strike at Orange Court-House?" You may be able to state with reference to information given you in regard to the location of the enemy on the opposite side of the Rappahannock.

Answer. General Porter communicated to us information in reference to the position and strength of the enemy south of the Rappahannock; and I presume that in this he suggests his wish to strike the enemy on his line of communication, as the matter was talked of and discussed before his leaving our headquarters at Falmouth.

Question. State if my dispatches of this character were sent to the President, or the commanding general here; and, if so, by whom?

Answer. Dispatches received from General Porter were sent to the President and the General-in-Chief, in order to satisfy the anxiety for the command of General Pope, felt at that time both by the President and the General-in-Chief.

Question. From the knowledge that you had of the accused, both before and whilst he was going to join General Pope's command, derived from his acts and his conversations, have you any reason to believe, or did you believe, that he would fail in obedience to General Pope, or in performing, to the best of his ability, the duty which he might be under after joining General Pope's command?

Answer. No, sir.

Examination by the accused here closed.

Examination by the COURT:

Question. Did you see General Porter after he came under the orders of General Pope?

Answer. No, sir.

Question. Did you receive yourself, or did you see, any messages, by telegraph or otherwise, from General Porter after he joined the command of General Pope?

Answer. I presume that a portion of the dispatches here referred to were written by General Porter after he joined General Pope. As to the exact dates, not having referred to them, I cannot state positively.

The examination of this witness was here closed.

Col. ROBERT E. CLARY was called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state to the court where you were on the night of

the 27th of August last, and what notice you received, if any, from me relating to the movement of trains that night?

Answer. I was at Warrenton Junction on the 27th of August last. At 10 o'clock that night, I received a note from General Porter to move the trains east on the railroad, beyond and east of Cedar Run, toward Bristoe Station. I gave the orders to the proper persons connected with the trains, and they commenced immediately to move.

Question. Will you state also where you were from 10 o'clock that night till toward daybreak?

Answer. The removal of the trains occupied me from 10 o'clock till about 2 o'clock in the morning, at which time, or perhaps a little later, I myself left that point for Bristoe Station.

Question. In what condition was the road with regard to obstructions upon it? And state, also, whether any of the bridges over the streams were occupied.

Answer. There is, I believe, but one bridge between Warrenton Junction and Bristoe Station, and that was across Cedar Run. That was unobstructed that night when I passed it. The road for some 3 miles, I think, was occupied by wagons, and was obstructed so as to render it very difficult for me and my party to pass along.

Question. How many were with you in your own party, and how long were you traveling that distance, and did you perform the whole journey that night?

Answer. I think there were about 10 or 12 persons composing the party. We did not pass over the whole journey that night. I lost the road, and lay by for about two hours, until daylight.

Question. How did you travel?

Answer. On horseback.

Question. What was the character of the night?

Answer. It was dark, cloudy.

Question. What was the cause of your losing your way?

Answer. None of the party had ever passed over the road before; and a branch road leading off appeared to be as much traveled as the main road, and we took it.

Question. Do you know what was the condition of the railroad?

Answer. I do not, except about 2 miles of it out of Bristoe Station, which was broken in one or two places.

Question. How broken?

Answer. The rails had been taken up, and I think one or two culverts had been destroyed by the rebel troops.

Question. Were there any cars in the culverts obstructing the road?

Answer. Not then.

Examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. You speak of pushing forward the trains. Do you mean the trains upon the railroad, or ordinary wagon trains?

Answer. I mean railroad trains loaded with our own stores, and I think some sick and wounded.

Question. In your opinion, could or could not General Porter, after the receipt of his order to move, which receipt was at 9.30 p. m. of the 27th of August, have cleared the road entirely of wagons by 1 or 2 o'clock that night, so that his march would not have been much impeded?

Answer. I think the troops could have passed over during the night, had a suffi-

cient force been sent in advance to have cleared the road of its obstructions, which, at the time I passed over it, extended only 3 miles, I think. When I passed over the road, it was between 2 and 3 o'clock in the morning. What the obstructions had been previously to that time, I am unable to say.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. Will you state whether at 1 o'clock the character of the night and the state of the road were such as, in your judgment, to render practicable the march of General Porter's troops to Bristoe Station, to arrive at or about daylight?

Answer. Not without the preliminary steps which I have previously stated ought to have been taken.

Question. Were, or were not, the first 3 or 4 miles of the road from Warrenton unobstructed?

Answer. They were, as I passed over it.

Examination of witness here closed.

Capt. B. F. FIFIELD called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state your position in the military service?

Answer. Captain and commissary.

Question. Where were you during the campaign of General Pope in Virginia?

Answer. I was attached to his headquarters, in charge of the transportation and railroads for the Department of the Army of Virginia.

Question. Do you remember whether you received from the accused (General Porter) a note on the 27th of August last?

Answer. I did not receive a note directly from General Porter, but I received an order through Colonel Clary, on the evening of the 27th of August.

Question. What was the order?

Answer. To have the trains moved from Warrenton Junction down as far as possible in the neighborhood of Bristoe Station—to have them all moved from Warrenton Junction by 1 o'clock at night—as the army were all to move and be under march at that time, and there would be no rear guard left to protect the trains, and they must, therefore, be in the advance.

Question. To what trains do you refer?

Answer. The trains of cars upon the railroad.

Question. With what were the cars loaded?

Answer. They were loaded with quartermaster and commissary stores, a large amount of ordnance stores, sick and wounded soldiers, and the camp equipage of a portion of the army from the Peninsula that had no transportation, and had come up and left their camp equipage there, and it had been taken charge of by me, and placed upon the trains.

Question. Was the effect of the execution of that order to place these stores in a place of comparative safety?

Answer. It was.

Question. How long were you engaged in executing that order?

Answer. I think I received the order about half-past 10 o'clock at night, or between 10 and 11 o'clock at night. I left myself about 2 o'clock, in advance of one train that was left behind, while an engine had to run down with a train and return,

as we had not motive power enough to haul all the cars at once. Leaving this last train, I myself left on horseback about 2 o'clock, I think; I will not be positive, but it will not vary much from 2 o'clock in the morning.

Question. How many cars were attached to the locomotive that came up last, after you left?

Answer. Twelve or fourteen cars; I will not be positive which.

Question. Do you know when that last train reached its destination?

Answer. It must have been near 4 o'clock in the morning, according to my estimation; I was not at the point where they did arrive, being perhaps a quarter or a half a mile off the track; but it was about 4 o'clock in the morning, I should judge.

Question. Where did you go after leaving the trains?

Answer. I attempted to go to Bristoe Station, but did not reach there until after daylight in the morning, having lost my way in connection with the party I was with.

Question. How did you travel?

Answer. On horseback.

Question. Were there any wagons on the country road?

Answer. There were.

Question. What distance were the wagons stretched along the road, if they were stretched?

Answer. I should think between 3 and 4 miles from the place where I first struck the wagons until we had got past the main body of the wagons. There were some scattered farther along.

Question. Were the wagons there when you left the railroad and went on toward Bristoe?

Answer. I found the wagons on my way between Warrenton Junction and Bristoe.

Question. What was the character of the night; was it light or dark?

Answer. The early part of the night was an ordinary starlight night of summer, without any moon; about half-past 11 o'clock it commenced overcasting and threatened rain; very black clouds came up, and it did sprinkle a little. It was very dark from that time till toward morning.

Question. What impediments to the march of troops, if any, were there on the railroad?

Answer. The movement of the trains during the night would have prevented the possibility of moving troops upon the railroad track.

Question. Were any of the culverts open; and, if so, how many?

Answer. The culverts upon that line of road are all open culverts; the small culverts are all open culverts.

Question. How many were there?

Answer. I cannot state the number between Warrenton Junction and Bristoe Station; there were several of them; but I could not make even an approximate statement with any correctness.

Question. Will you look at the signature to this paper [handing witness a paper], and state whether you are sufficiently acquainted with General Banks' handwriting to be able to recognize that as his signature?

Answer. [Examining the paper.] I have seen his signature but a few times. I should say that was his signature.

The paper was then read as follows:

HEADQUARTERS NEAR WARRENTON JUNCTION,
August 28—12.37 a. m.

Major-General PORTER,
Warrenton Junction:

GENERAL: I have this moment received your note of the 27th instant, directing me to hasten with all speed to Warrenton Junction. My corps reached here last night at dark, and is now encamped 1½ miles south of the Warrenton Junction. Is it desired that we move forward immediately, or wait until daylight? Please answer.

General Pope sends an order for two batteries of artillery to join General Heintzelman in the direction of Greenwich. They will be sent forward immediately.

Very respectfully, your obedient servant,

N. P. BANKS,
Major-General, Commanding Second Corps, Army of Virginia.

The examination by the accused was here closed.

Examination by the JUDGE-ADVOCATE:

Question. Were the wagons of which you speak in motion or in park?

Answer. They were very much jammed, and remaining stationary; I found a great deal of difficulty even in getting through them on horseback.

Question. Were they, or not, on both sides of the railroad track, or were they one side only?

Answer. I saw them only on one side; there may have been wagons on the other side, but I knew of no road except on one side.

Question. Were you, or not, with Colonel Clary that night?

Answer. I was.

Question. And lost your way in the same manner that he did?

Answer. He was the pilot.

Question. Were there any wagons on the road between Warrenton Junction and Kettle Run?

Answer. There is where the jam was, between Warrenton Junction and Kettle Run. The jam commenced just after leaving Catlett's Station—between that and Kettle Creek.

Question. How far is Catlett's Station from Warrenton Junction?

Answer. About 3 miles.

Question. Do you, or not, know of any troops marching or attempting to march on the night of the 27th of August last; if so, in what force and how far did they march?

Answer. I saw myself no troops in movement during the night. I was informed that General Porter's corps were to march, but I did not see them during the night.

Question. I understand you to say that you received that information and the order of which you have spoken from Colonel Clary?

Answer. Yes, sir; he received an order from General Porter, and came over to me, and called me up (I was in bed), and read it to me. It was in regard to the movement of the trains and getting the track clear ahead.

Question. Did you run any cars beyond Catlett's Station?

Answer. Yes, sir; we run them as near as possible to Kettle Creek, or Cedar Creek, as it is called (there are two names for it), perhaps within 80 rods of the creek. The railroad bridge across that creek was destroyed, and we could get no farther. That stream is about a mile, perhaps a mile and a quarter, beyond Bristoe Station.

Question. You say the jam occurred near Catlett's Station—between that and Cedar Run?

Answer. Yes, sir.

Question. Along where that jam occurred were there any railroad cars at the time?

Answer. The engines were passing back and forward from Warrenton Junction, down as far as they could go—down to this Cedar Creek. I had to send engines out and have them return again three or four times; perhaps four times. The first train I sent out I put upon a switch at Catlett's, and had the engine brought back again to take down another train as far as I could send it, which was down to near the creek. The engines that went down after that remained, except one which returned to bring down the last train, there being so many more cars than could be moved at once by the motive power that we had.

Examination by the judge-advocate here closed.

Examination by the COURT:

Question. How many efficient men would you have required to have cleared the road of wagons, commencing, say, at 10 o'clock that night?

Answer. It would be very difficult for me to answer that question intelligently, for I did not see these wagons at 10 o'clock, and I do not know what situation they were in at that time. I only saw them at the hour that I have named, when I was passing them. They may not have been in any jam at all at 10 o'clock. At the time I saw the wagons, the railroad track was on one side of them, and for some portions of the way where this jam occurred was timbered country; so far as I could judge, very densely timbered. It was very dark, and I could not judge very well about that. In some places it would have been very difficult to have moved those wagons without great trouble. In other places I think they could have been got out the road with reasonably energetic action. But everything was so obscure from the extreme darkness of the night, that it would be very difficult for me to give anything like a reasonable answer in regard to that matter.

Question. Were there any cars on the railroad from Warrenton Junction to Bristoe Station which would have prevented infantry from marching on the track after 1 o'clock on the morning of the 28th of August?

Answer. Yes, sir; there were.

Question. Was there any road by the side of the railroad upon which infantry troops could have marched, in order to avoid the obstructions on the railroad?

Answer. The only wagon road I know of was one that run almost the entire way, skirting along near the railroad track. That was the road which was used for wagon transportation.

Question. With 100 efficient men, commencing at 10 o'clock that night, do you think you could have cleared the wagon road so as to have rendered it passable for troops?

Answer. If I could have had command of the wagon road, and a sufficient force when the wagon trains commenced their movement, I think I could have kept them from a jam.

Question. At the point where the cars obstructed the railroad, was, or was not, the wagon road clear?

Answer. I do not think I can answer that question. The railroad track was not obstructed all the time. It was only from the trains passing down one way, and the engines returning again for more trains. It was that, I wish to be understood as saying, that would have prevented the movement of infantry troops upon the track without very great danger to them, and an almost entire obstruction to the movement of trains. The wagon road skirting along almost the entire road, almost in the immediate neighborhood of the track, I cannot say what might have been the condition there, because, as I remarked before, the night was very dark, and it was like a man groping his way in the darkness, without being able to see his hand before him much of the way, through the woods.

Question. Can you state what you would consider a sufficient number of men to have kept open the road?

Answer. I should judge that with 150 men under my command at the time I speak

of, taking charge of the road in the early part of the movement of these wagon trains, I would have been enabled to keep the road clear; I could have so disposed of them as to have accomplished that.

The examination of this witness was here closed.

Capt. GEORGE MONTEITH called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state what position you had in General Porter's command during the campaign of General Pope in Virginia?

Answer. I was first lieutenant of the Fourth Michigan Infantry, and aide-de-camp to General Porter.

Question. Do you remember how you were employed on the afternoon of the 27th of August; and, if you do, will you state under whose orders you were then acting?

Answer. On the evening of the 27th of August, General Porter sent Captain McQuade and myself to look out the road to Greenwich.

Question. For what purpose, as you then understood?

Answer. I supposed we were to take that road the next day.

Question. In what condition did you find the road, and what report upon the subject did you make to the accused?

Answer. After leaving Catlett's Station, we were directed on a road turning off from the road to Warrenton Junction. We found it to be an untraveled road, and were in doubt whether that was the road to Greenwich or not. Seeing a light burning in a house near by, we went to it, and found that it was Mr. Catlett's house, and there we got information that the road which we had found was the road to Greenwich.

Question. In what condition did you find the road from Warrenton Junction to Catlett's Station; were there obstructions upon it; and, if so, what were the obstructions?

Answer. We found wagon trains on the road from Warrenton Junction going by Catlett's Station. We also found wagon trains coming in on the Warrenton road, intersecting the road that runs by the railroad just below Catlett's Station.

Question. In what condition did you find the wagons when you were returning to General Porter?

Answer. Some of them had stopped, and some of them were moving along.

Question. What report did you make to General Porter of the condition in which you found the road?

Answer. I do not recollect what report I made, except that we had found the road to Greenwich.

Question. What report did you make to him of the condition of the road you had found, as far as obstructions were concerned?

Answer. I do not recollect that; after the road struck off from Catlett's Station toward Greenwich, we saw no wagons, that is, on the road going to Greenwich?

Question. What sort of a night was it?

Answer. Very dark; we had trouble in getting back; but, a part of the way, we did not come back the same road that we took going out.

Question. Have you any knowledge that any, and, if so, what, efforts were made to clear the road to Bristoe Station, and by whose orders?

Answer. The next morning, the 28th of August, when the march was taken up down the railroad, General Porter sent Lieutenant Weld and myself forward to use our efforts in making way for the infantry. The road was blocked up with wagons as far as we could see.

Question. What efforts were actually made, and how long were you in removing the wagons, if you removed them at all?

Answer. When we first came to the wagons, the woods on both sides of the road were so thick, and the road was so narrow, that it was impossible to turn the wagons out of the road, and we continued on until we came to a place where the wagons could be doubled or turned out of the road. We were also assisted by some cavalry sent with us; I think there were some half a dozen mounted men. After General Porter sent us with those cavalrymen, he also sent Lieutenant-Colonel Locke, with either a company or a squadron of cavalry, to labor in the same way.

Question. At what time in the morning did you commence your work with the wagons?

Answer. I should think it was between 4 and 5 o'clock.

Question. Was it light, or about light, at that time?

Answer. Yes, sir.

Question. At what time that morning did General Porter begin to move his troops?

Answer. I should think it was about 3 o'clock.

Question. Was it light at that time?

Answer. No, sir; it was quite dark.

Question. Have you any knowledge of any efforts having been made to secure any ammunition; and, if so, what efforts were made, and under whose orders?

Answer. On the morning of the 28th, when we arrived at Manassas Junction, General Porter sent Lieutenant-Colonel Locke, myself, and, I think, Lieutenant Weld, on the same mission, to find the ammunition train.

Question. Where did you find it?

Answer. We found it coming into Manassas Junction.

Question. What did you do with it?

Answer. We parked it on the side of the road, and it was afterward distributed to General Morell's and General Sykes' divisions.

Question. Did you, on the afternoon of the 29th, see a messenger from General Pope at General Porter's headquarters?

Answer. Yes, sir; Captain Pope.

Question. According to your recollection, what was the time when that messenger reached General Porter?

Answer. It was about sundown.

Question. Did you, at any time after that messenger left, go in search of him and call him back?

Answer. No, sir.

Question. Were you present when General McDowell parted from the accused on the 29th of August?

Answer. Yes, sir.

Question. At what place was it, and who was with General McDowell besides General Porter?

Answer. I should think it was a half or three-quarters of a mile from the front of General Porter's troops, and north of the Manassas Gap Railroad, on a narrow path in the woods, and General McDowell was alone when he left General Porter.

Question. Have you any recollection of having seen the accused receive, on the 29th of August, an order from General Pope to move forward?

Answer. Yes, sir.

Question. At what time was that order received?

Answer. It was between 3 and 4 o'clock that night, or rather the morning of the 30th of August.

Question. Did General Porter take any action under that order; and, if so, what action did he take?

Answer. Yes, sir; he waked me up (I was lying down on the ground by him), and sent me with a written message to General Morell, who was at the front.

Question. What was the message to General Morell, to tell him to do?

Answer. I did not know the contents of the message.

Question. What did General Morell do on getting the message?

Answer. He immediately withdrew his troops from the front.

Question. Did you return to General Porter's headquarters?

Answer. Yes, sir.

Question. What was then done?

Answer. We then moved off on the Sudley Springs road.

Question. General Porter's command, do you mean?

Answer. Yes, sir.

Question. When did they start; after you returned?

Answer. I should think somewhere about half-past 4 or 5 o'clock.

Question. At what time did you return?

Answer. Immediately.

Question. Do you mean by that to say that you were there about 4 o'clock, just before the troops started?

Answer. The troops might have been moving when I got back. I do not recollect distinctly about that.

Question. Did they move directly after you got back?

Answer. Yes, sir.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. At what time in the afternoon of the 27th of August did you receive this order from General Porter to go out and examine the road to Greenwich?

Answer. I should think it was about a half an hour before sunset.

Question. At what time did you return that night?

Answer. I do not know as I could tell exactly. I should think it was between 7 and 8 o'clock. It was after dark.

Question. Did you, or the officer with you, make a report to General Porter of the result of your examination?

Answer. I do not know whether Captain McQuade did. I did.

Question. At what hour did you make your report?

Answer. Directly after getting back.

Question. Did you, or not, see Captain Pope, on the 29th, after his return to the quarters of General Porter, after you first saw him?

Answer. No, sir.

Question. Are you able to recall with entire distinctness the hour at

which you first saw Captain Pope, and do you know whether that was on his first or second arrival there?

Answer. I am not able to state distinctly the hour. It was very near sundown; either a little before or a little after; and it must have been the first time he came there, if he visited there twice, because General Porter was present.

Question. Why do you say that, because General Porter was present, it must necessarily have been Captain Pope's first visit there?

Answer. Because General Porter went to the front very soon after seeing Captain Pope.

Question. Do you mean to say that, by 3 o'clock on the morning of the 28th of August, General Porter's forces were in motion from Warrenton Junction, or do you mean that preparations for the march were being made at that hour?

Answer. I do not think they were in motion at 3 o'clock; but soon after 3 o'clock they were formed and started to move, and got into confusion, I think, with a battery or two batteries of some other command that were passing along.

Question. Do you, or not, believe that the onward march, in point of fact, commenced before daylight?

Answer. I think it was about dawn of day.

Question. How could you know when General Porter received the order from General Pope on the morning of the 30th of August, when, as you testify, he awoke you?

Answer. As near as I can recollect, it was from what this aide-de-camp told me in connection with the difficulties he had found in getting to General Porter. He said that he had been nearly all night getting to him. I recollect that distinctly, and that he came around by Manassas Junction.

The examination of this witness was here closed.

Lieut. STEPHEN M. WELD called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Were you attached to the Army of Virginia when under the command of General Pope?

Answer. Yes, sir; I was acting aide-de-camp to General Porter.

Question. What kind of a night was the night of the 27th of August last?

Answer. It was very dark, indeed. I went to bed about 10 o'clock, and then the night was very dark, indeed. I heard some one, I think it was General Morell, who came into camp before I went to bed, say that he had been trying to find General Sykes' headquarters, but had lost his way. General Sykes' headquarters were very near ours. In the morning I got up by 3 o'clock, and it was then drizzling.

Question. Were you sent by General Porter, on the 29th of August last, to General Pope?

Answer. I started about 4 o'clock in the afternoon of the 29th, from the junction of the road that leads from Gainesville to Manassas Junction and the road that leads to Sudley Springs. I was sent with a message, not to General Pope, but to be delivered to either General McDowell or General King. I first received a written message, and then General Porter gave me a verbal message to the effect that General Morell would now be strongly engaged; that there was a large force in front of us; that large clouds of dust were seen there, &c. I also glanced over the written message, and it was to the same effect, but went more minutely into details which I do not now remember.

Question. Did you see any one on your road to General Pope on that occasion?

Answer. Yes, sir.

Question. Whom?

Answer. I saw General Hatch, who told me that General King was sick, and not there, and that he (General Hatch) commanded his division. I then delivered the written message to General Hatch, and also gave him the verbal message. I asked him if he had any answer for General Porter. He said, "Tell General Porter that we have whipped the enemy, and are driving them." Just then quite a heavy fire of musketry broke out to our right and front. I then asked General Hatch if I should send that message to General Porter. He said, "No; tell General Porter we have driven the enemy into the woods." I then wrote that, and gave it to an orderly I had with me, and told him to deliver it to General Porter. I then asked General Hatch whether that would be sufficient, or whether I had better also deliver the message to General McDowell. He told me I had better deliver it to General McDowell, and he told me where he had last seen him. I went in the direction he indicated, and found General McDowell, who was just then leaving General Pope. I delivered the dispatch to him. He read it, and said, "I am not the man; there is the man," pointing to General Pope. I went up to General Pope, and delivered the message to him, both written and verbal. I asked him whether he had any answer for General Porter. He said, "Tell General Porter we are having a hard fight." Just then General Pope called General McDowell back. I asked him if that was all he had to send to General Porter, and he said, "Yes." He then said to General McDowell, "The enemy are trying to turn our right; they have sent one or two brigades there, and I want you to send your division." General McDowell, as far as I can remember, made some objection, but General Pope insisted upon having a division sent there. I then left General Pope, and went down to the road, and waited about five minutes to see if there would be anything else sent to General Porter. While waiting there, I wrote what General Pope had said, and sent it by an orderly to General Porter. It did not reach him then, for I met the orderly on my way back, and he told me that he could not find General Porter. I then delivered the message myself to General Porter.

Question. At what time did you get back?

Answer. I got back after sundown. I think it was about a quarter to 7 o'clock when I got back, as near as I can recollect.

Question. Did you see Captain Pope that evening, or do you know him?

Answer. I do not know him.

Question. Did you see that evening one who professed to be a messenger from General Pope?

Answer. Yes, sir.

Question. Was he there when you got back, or did he come afterward?

Answer. He came afterward.

Question. How long did General Porter remain there after that messenger reached him?

Answer. I think he remained about five minutes. He then mounted his horse, and went up in the direction of the front.

Question. Did he return to his quarters that evening; and, if so, at what time?

Answer. He did return—I think from three-quarters of an hour to an hour afterterward.

Question. Have you any recollection that you pointed out to the messenger to whom you have referred a road that he had better take returning?

Answer. I was told to show this messenger the direct road back to General Pope. I did show it to him, and described it, and even drew on a piece of paper the road I had taken, which I afterward found out was not the direct road; there was a little variation in it. He could not see the road; he did not seem to understand where the road was, where it crossed the railroad. Some one then told me that I better go and show him where the road was, and I went up to the railroad with him, and pointed out the road that I had taken.

Question. Was that messenger in uniform?

Answer. Yes, sir.

Question. In officer's uniform?

Answer. Yes, sir.

Question. Did he take the road that you pointed out to him?

Answer. Yes, sir; he started on that road.

Question. Was that, or not, the road that you took in the march the next morning?

Answer. Yes, sir; I started the next morning to show Captain Smead, of Smead's battery, the way.

Question. Did you see that messenger of General Pope the second time; did he return?

Answer. No, sir; I did not.

Question. Did you go in search of him after he left, for the purpose of getting him to return?

Answer. No, sir; that was the last message I went on until I went the next morning with Captain Smead.

Question. Have you any knowledge of the time when General Porter received an order from General Pope, dated the evening of the 29th of August?

Answer. There was a messenger, I think he was an officer, who arrived there, I should think, between 3 and half-past 3 o'clock in the morning. As soon as he came, Lieutenant Chamberlain, of General Sykes' staff, was sent off to some of General Sykes' troops, and one of General Porter's officers was sent up to the front, and I received orders to show Captain Smead the way to where I met General Pope the evening before.

Question. By whom were those orders given to those officers and yourself?

Answer. By General Porter.

Question. How long after that messenger left was it before those orders were given?

Answer. The orders were given immediately; that is, Lieutenant Chamberlain went off immediately, and my impression is that the officer who went to the front did so also. I think I waited about a half an hour, or three-quarters, before I started.

Question. What caused you to wait?

Answer. I waited until it grew lighter.

Question. What was your object in waiting until it grew lighter; would you have had any difficulty before?

Answer. It was so dark that I think there would have been trouble.

Question. Were you present, on the 29th of August, when General Porter and General McDowell separated from each other?

Answer. Yes, sir. I was not close to them; I was within a hundred feet of them, I should think.

Question. Who was with General McDowell, besides General Porter, when they separated?

Answer. There was no one close to him. There was no one any nearer than I was, except, perhaps, 10 feet nearer, or something like that. There was no one close to him.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Will you look at this paper [handing witness original of joint note from General Porter to Generals McDowell and King, which is set forth on page 116 of the record], and say whether you recognize it as the one you bore to General McDowell and General King on the occasion you have referred to?

Answer. [After examining it.] I do not think that is the one. The one I took, General Pope put in his vest pocket.

Question. At what point did you say General Porter's command was when you set out with the note you refer to?

Answer. A part of the force was in a road between the junction of the Sudley Springs road and the road to Gainesville, and the rest of it was up to the front, in the direction of Gainesville, where General Porter had left it when we came down there.

Question. What enables you to remember the precise hour when you set out; did you look at your watch?

Answer. I looked at my watch. It was either five minutes of or five minutes past 4 o'clock, I am not certain which; and then, in addition to that, the time I staid in the front until I came down to where General Porter was.

Question. Did you, or not, look at your watch when you were with General Pope and General McDowell, so as to enable you to speak as to the hour of that interview?

Answer. I do not remember of looking at it then.

Question. What hour do you suppose it to have been when you delivered this note to General Pope?

Answer. It was at least 5 o'clock.

Question. Did you set out immediately upon your return to General Porter's headquarters?

Answer. No, sir; I waited about five minutes before I started.

Question. How long a time do you suppose you occupied in returning?

Answer. I think I was at least an hour and a half. I came back by a different road from what I went; and I did not go direct to General Porter, for he had told me that I would find him up to the front. I came out near Bethlehem church, and went up to the front; and, not finding him there, I came back, and reached General Porter where I had left him.

Question. Was it dark then?

Answer. No, sir; it was not dark. I should call it dusk—between sunset and dark.

Question. Did you say that on your return you found there the messenger from General Pope?

Answer. No, sir; he was not there when I returned. He came there after I got back.

Question. How long after?

Answer. About fifteen minutes, according to my recollection.

Question. Was it dark when that messenger returned?

Answer. It was not dark, but it was pretty near it, for I remember that he could not see this road; I had to go out to the railroad and show it to him.

Question. You know nothing of his having been there before?

Answer. No, sir. I think that was the first time he had been there.

Question. What reason have you to believe that it was the first time?

Answer. Because I saw General Porter reading a note just after the messenger arrived there; and just after that I saw him writing a note, and then I saw him mount his horse and ride away toward the front, and I judged from that that the messenger had just arrived there with the order.

Question. You say you bore a verbal message back to General Porter, and also a written one?

Answer. All the messages I received were verbal. I wrote them down, and sent them back by orderlies. The first one from General Hatch reached General Porter by the orderly; the second did not.

Question. What was the first message?

Answer. It was from General Hatch, saying, "We have driven the enemy into the woods."

Question. Can you remember the hour at which you sent off that message, and can you tell at what hour it probably reached General Porter?

Answer. I think I sent the one from General Hatch at from a quarter to ten minutes before 5 o'clock. It was before I saw General Pope. I do not know how long it took the orderly to get there. If he went directly back, I think he must have got there by a quarter to 6 o'clock.

Question. Was, or was not, the note which you bore to General McDowell and General King of the same import as the one that I showed you? If not, in what respects do they differ?

Answer. I do not remember anything in regard to going back to Manassas. In the note I carried, General Porter speaks of clouds of dust, as in the one showed me here. The note I carried began, "Morell will soon be strongly engaged," and that was also the verbal message that I took.

Question. Was, or was not, this after the engagement of General Morell with the rebel battery?

Answer. It was after.

Question. Were, or were not, the forces falling back at that time?

Answer. No, sir; they had halted.

Examination by the judge-advocate was here closed.

Examination by the COURT:

Question. Was General Morell engaged with the enemy after you started with that note?

Answer. I do not know.

The examination of this witness was here closed.

The court thereupon adjourned to 11 a. m. on Friday next.

—

WASHINGTON, D. C., *December* 26, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. B. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

The accused, in accordance with notice given at the last meeting of the court, submitted a protest, which was read, against the decision of the court excluding certain telegrams, messages, &c., sent by the accused to General Burnside, and asking that the court reverse its former decision.

At the request of a member, the court was cleared.

After some time the court was reopened, and the judge-advocate announced the decision of the court to be as follows:

The court determine that the protest shall be filed as a part of the history of the case, and of its action upon the question raised.

While cotemporaneous declarations of the intent with which a particular act was done are admissible, the rule is necessarily confined to declarations having reference to the act or acts sought to be explained. Declarations referring to other acts, not the subject of investigation, with a view of showing a general reputation or character for loyalty to duty, are not considered as embraced by the rule of evidence cited by the accused.

Lieut. Col. FREDERICK T. LOCKE was then called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state what position, if any, you held in General Porter's army corps whilst under the command of General Pope?

Answer. Assistant adjutant-general and chief of General Porter's staff.

Question. Have you any knowledge of an order having been received by General Porter from General Pope on the 27th of August last? If you have, state at what time it was received.

Answer. An order was brought to march to Greenwich. That order was received some time during the day; I cannot fix the time.

Question. Have you any knowledge of the accused having received another order on the evening of the 27th of August last?

Answer. Yes, sir.

Question. What was that order, and who brought it?

Answer. It was brought by Capt. Drake DeKay. The order was to march to Bristoe Station.

Question. Do you remember at what time, according to that order, the march was to commence?

Answer. At 1 o'clock a. m. the next morning.

Question. When was the order received by the accused?

Answer. Very nearly 10 o'clock in the evening.

Question. Were you present at any time that evening when any report was made to the accused of the condition of the road?

Answer. Yes, sir.

Question. Do you remember what the report was? If you do, state it.

Answer. The report was, that the road was very much blocked, and that there were several very bad places in the road.

Question. Was the corps ordered to march; and, if so, at what time after that order was received?

Answer. It was ordered to march at 3 o'clock the next morning.

Question. At what time was the reveille that morning?

Answer. It was after 1 o'clock—between 1 and 2 o'clock.

Question. Do you know how far the corps had marched the day before, the 27th?

Answer. One portion of it had marched between 17 and 18 miles; the other portion had not marched quite so far.

Question. About how far do you think the other portion had marched?

Answer. I am not positive, but, as near as I can recollect, between 11 and 12 miles.

Question. Had they stopped on the march, do you know, to take a meal?

Answer. Not that I am aware of.

Question. Did the corps march at 3 o'clock a. m. on the 28th of August?

Answer. Yes, sir.

Question. What difficulties, if any, did they encounter, and what was the cause of those difficulties?

Answer. One great difficulty was the darkness of the night. The next was the nearly impassable condition of the road by reason of wagon trains.

Question. Was the night very dark?

Answer. Extremely dark.

Question. Have you any recollection that you yourself got into difficulty in doing your own duty that night?

Answer. Yes, sir; I received a very severe injury, groping about in the darkness.

Question. How far did the corps march that day, the 28th of August?

Answer. Between 9 and 10 miles.

Question. After they commenced marching, will you state whether, in your opinion, they went as fast as they could?

Answer. They marched as fast as they could under the circumstances.

Question. By "the circumstances," do you mean the darkness of the night and the obstructions upon the road?

Answer. Yes, sir.

Question. In what condition were the men when they started; were they fresh, or were they fatigued?

Answer. I think they were very much fatigued.

Question. Had you any conversation or conversations with General McDowell about the 29th of August?

Answer. In the afternoon of the 29th I had.

Question. State what passed between you.

The judge-advocate asked if any foundation had been laid for this question. The accused stated that, according to his recollection, General McDowell had been questioned by him in reference to the conversation referred to.

The judge-advocate said that, upon that statement by the accused, he would not object.

Answer. The circumstances occurred in this way: I was sent by General Porter with a message to General King. On finding General King, General McDowell was with him. I stated my message to General King, and General McDowell answered, "Give my compliments to General Porter, and say to him that I am going to the right, and will take General King with me. I think he (General Porter) better remain where he is; but, if it is necessary for him to fall back, he can do so upon my left."

Question. What was the message you carried from General Porter to General King?

Answer. For him to remain where he was until further orders.

Question. Did you understand that General King was under the orders of General Porter?

Answer. I did.

Question. Did you deliver the message that General McDowell gave you for General Porter to the general?

Answer. Yes, sir.

Question. Do you recollect whether you saw General McDowell on that day, the 29th of August, before that time?

Answer. Yes, sir.

Question. Where did you see him?

Answer. On the ground where we had taken up our position, in the direction of Gainesville, and near the Manassas Gap Railroad.

Question. Was General Porter then forming his corps in line of battle?

Answer. Yes, sir.

Question. How far had he gone with that view?

Answer. He had made considerable progress in the disposition of his troops. A battery was in position, and the troops were being deployed. Skirmishers had been thrown out to the front.

Question. Did you hear anything said by General McDowell to General Porter at that time in relation to the location of his men, with a view to a battle? If you did, state what it was.

Answer. Yes, sir. General McDowell said, "Porter, you are out too far already; this is no place to fight a battle."

Question. How long did General McDowell remain with General Porter's command after he said that?

Answer. He remained some little time in private conversation with General Porter. They then mounted their horses, and rode off across the railroad to a woods upon our right of the road.

Question. After you delivered the message from General McDowell to General Porter, what did General Porter then do with his troops?

Answer. That portion of his command that he had sent off to the right was recalled, and he threw them a little back, so that they would be out of sight and protected from the enemy's fire.

Question. Was there any retreat at all?

Answer. No, sir.

Question. How long did his corps remain there?

Answer. Until the next morning, at daylight.

Question. Were the batteries in place?

Answer. Yes, sir.

Question. Did you see any, and, if so, what, efforts made by General Porter to facilitate the march upon the 27th and 28th of August to Bristoe Station?

Answer. General Porter made great personal exertions to clear the way. He also had all his staff present with him upon that day; and he used all the cavalry that he had with him to assist in clearing the road, so that the troops could press on.

Question. What number of cavalry had he at first?

Answer. When we first started, he had some dozen orderlies.

Question. Did he get any, and, if so, how many, afterward while on the march?

Answer. At Catlett's Station a detachment of the First Maine Regiment was assigned to him.

Question. Have you any knowledge that Captain Pope arrived at General Porter's headquarters with an order?

Answer. I know that on the evening of the 29th of August a staff officer arrived from General Pope, who, I was afterward told, was Captain Pope.

Question. Were you present when that staff officer communicated with General Porter?

Answer. I was.

Question. What occurred?

Answer. He handed the general a note, which I afterward ascertained was an order for him to attack the enemy at once. He very soon afterward ordered me to ride up to General Morell, and direct him to move forward and attack the enemy immediately, and to say that he would be up himself right after me.

Question. At what time was that message from General Pope delivered to General Porter?

Answer. Between sundown and dusk.

Question. How far was General Morell's division from General Porter's headquarters at that time?

Answer. About a mile and a half.

Question. Do you think you could point out upon the map the location of General Morell's force at that time?

Answer. Yes, sir.

Question. Will you be kind enough to do so upon the map before the court?

Answer. The witness did so.

Question. What was the position of the enemy in your front; or were they in your front?

Answer. Yes, sir.

Question. Will you indicate upon the map their position?

Answer. The witness did so.

Question. Were you attached to General Porter's staff, and with him or his corps, the whole time he was under the command of General Pope?

Answer. Yes, sir.

Question. Have you any knowledge that another order was received on the evening of the 29th of August, after the delivery of the order you have just spoken of?

Answer. There was an order received very early the next morning.

Question. How early?

Answer. About half-past 3 o'clock.

Question. What was that order?

Answer. For him to march at once to the battle-field.

Question. What did General Porter do after receiving that order?

Answer. He sent an officer to General Morell, to direct him to bring in his pickets

and prepare to join the rest of the command on the march. General Sykes' division immediately got under arms, and preparations were made to move.

Question. Did you go with any portion of the corps on the march?

Answer. Yes, sir.

Question. What portion?

Answer. The leading division.

Question. Who commanded that division?

Answer. General Sykes.

Question. Have you any recollection of taking an order from General Porter to General Sturgis, or of seeing an order sent to him by an orderly?

Answer. No, sir.

Question. Have you any knowledge that an orderly was sent to General Sturgis by General Porter?

Answer. I do not recollect it.

Question. You have stated that you were with General Porter at the time General Porter joined the command of General Pope; did you witness the most of his conduct during that time, the management of his troops, &c.?

Answer. Yes, sir.

Question. Did he exhibit any indisposition to aid General Pope, or to do his entire duty?

Answer. He did not.

Question. Have you any knowledge what the character of the country is between General Porter's right and General McDowell's left, as it was on the 29th of August last?

Answer. I have some knowledge of it.

Question. What was it? Could the troops have moved through it, do you think, so as to have united with McDowell?

Answer. There were dense woods, and the troops would have had difficulty in marching through them.

Question. Will you state whether, after seeing the staff officer who delivered the order of 4.30 p. m. of the 29th of August, you were sent or went after that officer to recall him?

Answer. I was not sent to recall him, and I do not know that anybody else was.

Question. What aides were with General Porter at that time?

Answer. Captain Monteith and Lieutenant Weld.

Question. Were those all?

Answer. All besides myself.

Question. Had he not another aide named Captain McQuade?

Answer. He had.

Question. Where was he then?

Answer. He was absent as acting quartermaster in charge of the trains at that time.

Examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Will you state whether, or not, in point of fact, the forces began to move on the morning of the 28th of August before daylight—I do not speak of the preparations to move, but of the active movement—was it began, or not, before daylight on the morning of the 28th of August?

Answer. Yes, sir; they began to move before daylight.

Question. How long before daylight?

Answer. I cannot say how long, but it was some time before daylight.

Question. From whom was the order received to march at 3 o'clock?

Answer. General Porter gave that order.

Question. At what hour on the afternoon of the 29th did this interview occur between General Porter and General McDowell of which you have spoken—the interview on the railroad?

Answer. It was not on the railroad, but near the railroad. I think it was between 12 and 1 o'clock.

Question. How far, in the direction of Gainesville, from the junction of the Sudley Springs road with the railroad?

Answer. I do not know that.

Question. Were you present when they first met?

Answer. Yes, sir.

Question. Were, or were not, the words which you have deposed to here, the salutation with which General McDowell addressed General Porter?

Answer. I stood close by; I did not consider the remark as a salutation.

Question. I mean by that, was it the first remark which he addressed to General Porter?

Answer. No, sir.

Question. Who was present, besides yourself, when that remark was made?

Answer. Captain Martin, chief of General Morell's division artillery, was present; I do not know who else.

Question. Did you see them ride away together?

Answer. Yes, sir.

Question. Were you, or not, present during the remainder of the interview?

Answer. I was a short distance off; they were conversing in a low tone, and I did not hear what was said.

Question. Was the battle then in progress?

Answer. Distant firing of artillery was heard off to our right.

Question. How long after this was it before you were sent to Generals McDowell and King with this message of which you have spoken?

Answer. From a half to three-quarters of an hour, I think.

Question. Where did you find General McDowell at the expiration of from half to three-quarters of an hour after he separated from General Porter?

Answer. When I was sent to General King, I found General McDowell with him, near Bethlehem church, on the right-hand side of the road leading to Manassas.

Question. Did, or did not, General McDowell have an interview on the road with General Porter subsequent to this time?

Answer. About 10 o'clock in the morning.

Question. I mean subsequent to the one of which you have spoken—in the direction of Gainesville.

Answer. After they had had this private interview, they rode off together across the railroad into the woods, which were on the other side of the railroad; there the two generals separated. I rode off with General Porter after they returned.

Question. From this interview, then, as I understand you, General McDowell proceeded down in the direction of Bethlehem church?

Answer. I suppose so.

Question. And you have no knowledge of any subsequent interview between them on that day?

Answer. No, sir.

Question. Did General King hear the message which, on that occasion, you were directed to bear to General Porter?

Answer. Yes, sir.

Question. Did you bear it to him immediately?

Answer. Yes, sir.

Question. And at what hour do you suppose it reached him?

Answer. I lost no time in returning; I could not have been over a half an hour in getting to our position, where I had left General Porter.

Question. That would bring it to 2 o'clock or half-past 2?

Answer. It was after that, at least, I think it was.

Examination by the judge-advocate here closed.

Examination by the COURT:

Question. In case of an order for the movement of troops at a specified time, to meet an emergency, would a report of bad roads be a reason for commencing the march before or after the time fixed in the order, if the time is to be varied from at all?

Answer. If the time were to be varied from, it would be better to have it prior to the time fixed than after.

Question. At what hour of the night did the report of the condition of the road from Warrenton Junction to Bristoe Station reach General Porter?

Answer. About 8 o'clock in the evening, as near as I can recollect.

Question. Did, or did not, General Porter attack the enemy on the 29th of August, in accordance with the order from General Pope, borne by Captain Pope?

Answer. He did not. He gave the order for the attack.

Question. Did, or did not, General Morell make any attack upon the enemy after he received the order you bore to him on the 29th of August, and what reply did he make to that order when delivered?

Answer. After delivering the order to him, he proceeded at once to move up his troops for the purpose of making the attack, but the attack was not made. When the order was delivered to him, he said he thought it was too late to do much of anything.

Question. Do you know why he thought it was too late?

Answer. It was in reference to the lateness of the day.

Question. Was the enemy within reach at that time?

Answer. I understood that they were forming in line of battle directly in front of us.

Question. How far distant?

Answer. I do not know positively—within a mile and a half, I should judge.

Question. Did you report to General Porter the remark of General Morell, that he thought it was too late to do much of anything?

Answer. I think I did. I did not see General Porter until some little time after, as he passed me on the road on my return, and in the interim General Porter had seen General Morell.

Question. How much time elapsed between the departure of General McDowell and the arrival of the order of General Pope to attack the enemy, and what were the accused and his command doing during that time?

Answer. I cannot say exactly as to the lapse of time. But during that time General Morell's troops were in position, and our artillery were engaging some artillery of the enemy, and there was some musketry firing also.

Question. State approximately the length of time that you think elapsed between the departure of General McDowell and the receipt of that order.

Answer. I should think three hours. General Sykes' division was immediately in rear of General Morell's division, ready to support it in case of emergency.

Question. Were the troops all in the same place that they were in when General McDowell left, or had they moved after he left?

Answer. They had moved but a very short distance; that is, they were in about the same place. I should say the difference was not material.

Question. Were the troops located in the vicinity of Bethlehem church, or at the point where this conversation was held between General McDowell and General Porter?

Answer. General Morell's division was on the ground where the conversation was held. General Sykes' division was right immediately in rear of that.

Question. For how long a time did the troops continue in this relative position?

Answer. From the time of their arrival, on the morning of the 29th of August, until they moved next morning, the 30th.

Question. Were the enemy all the time in that vicinity?

Answer. The enemy were moving toward our front, as I could see the immense clouds of dust they were raising.

Question. Was there a battle between the forces now referred to by you?

Answer. There was skirmishing and some artillery duelling.

Question. On what day?

Answer. On the 29th of August.

Question. Did General McDowell, as superior in rank, give the accused any orders on the 29th of August, after he left him, and, if so, what were they?

Answer. Nothing that I know of, except what I have stated.

Question. Did you consider in the nature of an order that portion of the message you say you bore from General McDowell to General Por-

ter, which says, "I think he better remain where he is; but if it is necessary for him to fall back, he can do so upon my left?"

Answer. Yes, sir; that was my impression, coming as it did from General McDowell as General Porter's superior.

Question. Was that order obeyed?

Answer. Our troops did not fall back that afternoon.

Question. From the position of General Porter's corps when General McDowell left him, what time would it have taken to have attacked the enemy then, had General Porter's corps been moved with promptness and rapidity?

Answer. They were virtually engaged immediately after that time. We lost several men from the enemy's fire.

Question. Could you have made more rapid progress on the morning of the 28th of August, in your march from Warrenton Junction, by starting at 1 o'clock than by starting at 3 o'clock?

Answer. I do not think we could.

Question. How long after the order of 4.30 p. m. of the 29th of August was received do you think it would have taken to have attacked the enemy's right and his rear, or could it have been done at all?

Answer. It would have taken until after dark to have made the attack upon their right. I do not think we could have gained their rear at all.

Question. Do you think the artillery could have been taken, for the purpose of attacking the right flank and rear of the enemy?

Answer. I do not think it could, owing to the nature of the ground.

Question. Did, or did not, the enemy on the succeeding day move around over that same ground in their flank movement upon our army?

Answer. I know they flanked us on the succeeding day, but I do not know that they moved over that same ground.

Question. What is the character of the ground over which, as you state, the corps of General Porter would have been obliged to move in order to make the attack as directed by General Pope?

Answer. It was very much broken.

Question. How far was it from the head of General Porter's column to the left flank of General Pope's army on the 29th of August?

Answer. I do not know.

The examination of this witness was here closed.

Capt. A. P. MARTIN was called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state your rank and position in the military service during the last week of August, 1862?

Answer. A captain in the Third Massachusetts Battery, and commanding the division artillery of General Morell's division.

Question. On the 29th of August did you see a meeting take place between General McDowell and General Porter?

Answer. I did.

Question. At about what hour, as near as you can fix it?

Answer. About 11 o'clock in the day.

Question. At what place?

Answer. On the road leading from Manassas Junction to Gainesville.

Question. I mean in what place, in reference to the command?

Answer. At the head of the column.

Question. Did those two officers meet with the usual salutation between gentlemen and officers?

Answer. They did.

Question. After that salutation, did you hear any part of the conversation between them?

Answer. I did.

Question. Who spoke?

Answer. General McDowell.

Question. What did he say?

Answer. "Porter, this is no place to fight a battle; you are out too far."

Question. Did you at that time hear any further conversation between those two officers?

Answer. I did not.

Question. Was any one besides yourself near the two officers at that time; and, if so, who? I mean within hearing.

Answer. No one that I recollect, except Colonel Locke. There were others standing by, but whether they were near enough to hear the conversation or not, I do not know.

Question. After this remark of General McDowell, what did the two officers then do?

Answer. I moved away, as I did not consider it my place to remain there, and left them. I afterward saw them at a distance, talking together alone.

Question. Do you remember whether Colonel Locke moved away at the same time?

Answer. I did not notice.

Question. At the time these two officers thus met, about 11 o'clock in the day, or about that time, what was going on in the command of General Porter?

Answer. He had sent out skirmishers to the front, and the troops were moving, closing up apparently, *en masse*, as I supposed, preparing to form a line of battle, which was afterward done.

Question. After this conversation, did you continue to observe what was going on in the corps, and whether these movements for battle order were continued, or were they suspended?

Answer. They were continued. The brigade that was leading were being disposed of on the hill near where the conversation referred to had taken place. One brigade and one battery moved off to the right shortly after, evidently preparing to form on right of the brigade on the hill. I went with the battery that moved to the right, to see its position. One battery was placed in position where the conversation was held about that time.

Question. Were you present when the two generals parted?

Answer. No, sir.

Question. As to the movements on the night of the 27th and the morning of the 28th of August, what time was reveille that night or that morning?

Answer. I think we had reveille about 1 o'clock; it was shortly after midnight,

Question. At what hour were the troops ordered to march?

Answer. I think it was about 3 o'clock—about that time.

Question. At what time did they begin to march?

Answer. We moved out between 3 and 4 o'clock across the run, less than a mile from camp, and halted there, and remained there until after daybreak.

Question. When you began to march, was it very dark?

Answer. When we left the camp to march, it was.

Question. State what you know of the condition of the road at that time, with reference to obstructions.

Answer. I did not know the condition of the road so early in the morning. I only know that there was some artillery and teams that we were obliged to pass by going through the field as we passed over the road.

Question. If you encountered any difficulties yourself in moving at that time, state what they were and how they arose.

Answer. We encountered a difficulty in getting out of camp in the darkness; getting many of our carriages stuck in the run near the edge of the camp. Some of them were not got out until after daylight, especially one battery wagon.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Will you describe the character of the ground between the head of General Porter's column and the enemy, as seen from the point at which the column was on the 29th of August?

Answer. There was a ravine in front; about 150 yards in front of the position where the conversation referred to took place. In front of that was an open plain, probably 300 yards from the ravine. In front of that was a dense woods.

Question. Did the road pass over this ravine?

Answer. Yes, sir.

Question. Both the railroad and the country road which runs by the side of the railroad?

Answer. Yes, sir.

Question. You think it was as early as 11 o'clock on that day that the interview took place between General McDowell and General Porter, on the 29th of August?

Answer. I should think it was about that hour. I have no means of knowing precisely.

Question. Do you recollect any other part of the conversation besides the words you have stated?

Answer. I heard no other part of the conversation.

Question. What reply did General Porter make to that?

Answer. He made no reply that I heard. I moved away immediately.

Question. Was, or was not, their conversation continued, or were those words all that were spoken during that interview?

Answer. I cannot tell.

Question. How long did the interview continue after they rode off together?

Answer. I did not know. I only observed them once, as I happened to be looking in the direction where they were; but I did not pay any particular attention.

Question. Was there, or not, any engagement with the enemy beyond

that which resulted from the attack made by one of their batteries upon the head of the column?

Answer. Some slight skirmishing in front, and the firing which took place between the batteries.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. Do you know of any order having been given by General Porter to make an attack upon the enemy during that day?

Answer. I did not; I received orders from him to put the batteries in position.

Question. How long did the artillery firing continue?

Answer. The firing of the first section of the enemy's battery that opened from the woods in front continued, perhaps, twenty minutes; they fired very slowly. An hour later, perhaps, there was a battery opened farther to our right, and they were engaged by Hazlitt's battery, of Morell's division.

Question. At what distance from each other were these batteries that were engaged?

Answer. I should think not over a thousand yards; it might have been a thousand or twelve hundred yards.

Question. Do you know whether any effect was produced on either side by this artillery fire?

Answer. They were in the woods, and we could not see, except that the first battery that was opened was silenced, I should think, in about twenty minutes or half an hour.

Question. Was there any loss on our side?

Answer. Yes, sir; one man was killed by the first shot that the enemy fired; I saw him fall.

Question. On which side of the Manassas Gap Railroad, north or south, were the enemy's batteries, that you were then engaging?

Answer. They were on the side toward us—the south side, I suppose.

The examination of this witness was here closed.

Maj. Gen. GEORGE W. MORELL called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Please state to the court your rank and position in the military service during the last week of August, 1862.

Answer. Major-general of volunteers; I have held that rank since the 1st of August last.

Question. To what army corps was your division then attached?

Answer. The Fifth Army Corps; General Porter's.

Question. Where were you and your command on the evening of the 27th of August last?

Answer. At Warrenton Junction.

Question. At what time did you arrive there?

Answer. I arrived there myself about the middle of the afternoon, I think; my command, the last of it, did not arrive there until near sunset.

Question. How far had your command marched that day?

Answer. Two brigades had marched from Kelly's Ford, on the Rappahannock, and one had marched from Barnett's Ford; I cannot state the exact distance in miles; I think from Kelly's Ford it was something like 17 miles, and 19 or 20 miles from Barnett's Ford.

Question. When you started on the march to Warrenton Junction, what did you then suppose to be your ultimate destination at that time; to what point were you going?

Answer. I supposed then that I was going to Warrenton; but I was directed to go to Bealeton, where we would receive further orders.

Question. Do you recognize this order [handing paper to witness] as one received by you from me during that day?

Answer. [After examining it.] Yes, sir; I recognize the order.

The order was then read as follows:

HEADQUARTERS FIFTH ARMY CORPS,
August 27, 1862.

Major-General MORELL,
Commanding Division:

GENERAL: The commanding general directs that you hurry up with your command, pass through Bealeton and Fayetteville, and join the commanding general in the vicinity of Warrenton. Smead will be directed to join and report to you with his battery. When your command passes through Bealeton and Fayetteville, have your ranks well closed up, so that a good impression may be made by the appearance of our troops. Permit no straggling.

Very respectfully, your obedient servant,

FRED. T. LOCKE, *A. A. G.*

After getting to Bealeton, send all your men belonging to the cavalry back to their commands. If Griffin cannot get all the way up to-day, let him stop at Bealeton. Try and keep three days' cooked rations always in possession of your men.

GENERAL: Lose no time in getting up. You will find me near Warrenton, and if you send forward an officer to me, will have you located. Do all you can to get up provisions, and put as much bread in haversacks as possible—three days'. We go right to the railroad, and, with your cattle, will manage to get all that is wanted. Hurry up Griffin. Don't wait for him. Hope you are improving.

F. J. PORTER,
Major-General.

Question. Did you receive counter orders from that?

Answer. When I arrived at Bealeton, I received orders to go to Warrenton Junction.

Question. Do you know the cause of the change of destination?

Answer. No, sir.

Question. Was the effect of this change of orders to make the march longer and more fatiguing than it would otherwise have been?

Answer. I do not know. I do not know the distance to Warrenton. It was a country new to me.

Question. What was the condition of the troops in your command when they arrived at Warrenton Junction on the evening of the 27th of August?

Answer. They were very much exhausted from their previous marching. They had marched all the way from James River, except from Fortress Monroe to Aquia Creek.

Question. Had they marched laboriously, and as fast as possible, day after day?

Answer. Yes, sir; I think they had, and sometimes at night. On the 25th of August they were lying quiet.

Question. Do you know anything of an order received by General Porter from General Pope on the evening of the 27th of August?

Answer. Yes, sir. I was present when he received one brought by Captain DeKay.

Question. About what hour?

Answer. About 10 o'clock.

Question. Who else, as you recollect, was present at the time?

Answer. General Sykes and General Butterfield were either present or came in a very few minutes after. I do not know which.

Question. State what occurred at the time of the receipt of the order, or immediately afterward, between the accused and yourself and the other generals.

Answer. General Porter said to us that he had received this order to march at 1 o'clock that night. We immediately spoke of the condition of our troops—they being very much fatigued—and the darkness of the night, and said that we did not believe we could make any better progress by attempting to start at that hour than if we waited until daylight. After some little conversation, General Porter said, "Well, we will start at 3 o'clock; get ready." I immediately left his tent, and went back to my division and made preparations for moving.

Question. Did the generals then present, yourself included, express in strong terms the difficulty of moving as early as 1 o'clock, or earlier than 3 o'clock?

Answer. Yes, on account of the difficulty of marching at night. It was a very dark night; it was cloudy, threatening to rain, and did rain before morning.

Question. About what time did the march or movement of troops commence?

Answer. At 3 o'clock, or very near that time. That was the hour designated.

Question. About what time was reveille that morning?

Answer. It must have been an hour, or an hour and a half, previous—long enough to let the men get their breakfast. I do not know the precise hour.

Question. In order to have moved at 1 o'clock that night, at what hour must the reveille have been beaten?

Answer. If we had moved at 1 o'clock, the men would probably have been kept up all night—have broken their whole night's rest. That was what I wished to avoid; and I think the other officers did also. Reveille would have been beaten by 12 o'clock, I suppose. Some of the men did not get into camp until dark.

Question. When you moved at 3 o'clock, did you encounter difficulties and confusion in your movements in the darkness?

Answer. Yes, sir; until we had the benefit of daylight there was a great deal. Directly in front of our camp was a little stream of water, or swale, that made it difficult to get started.

Question. After starting at 3 o'clock, did your own command, and, so far as you know, the rest of the corps, make the best of their way and push on as fast as possible toward Bristoe Station?

Answer. Yes, sir; General Sykes' division led that morning. When the head of my division got to the railroad, which was, perhaps, a mile from where we started, we waited there for General Sykes' division to pass us, and we were there until some time after daylight.

At this stage of the examination the court adjourned to 11 a. m. tomorrow.

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WASHINGTON, D. C., *December* 27, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts. U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford,

U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

The examination of Maj. Gen. GEORGE W. MORELL was then resumed, as follows:

By the ACCUSED:

Question. Now, to pass to the 29th of August, please state to the court what orders were issued by General Porter on that day, so far as you may know them, commencing at reveille; and what dispositions of your own command, and of others, so far as you know, were made by him during that day.

Answer. General Porter received an order from General Pope between daylight and sunrise on the morning of the 29th of August, directing him to march to Centreville. General Porter immediately communicated the order to me, and I went to my division and issued the orders there. We were to march at 7 o'clock that morning. General Sykes' division started at that hour; mine followed immediately after. When the head of my division had crossed the railroad at Manassas, I was halted, and in a short time received orders to go to Gainesville. As we countermarched to go there, my division was thrown in front, General Sykes having already passed on toward Centreville. We had gone up the road toward Gainesville, perhaps about 3 miles, when I met a mounted man coming toward us. I stopped him, and asked him the road to Gainesville, and also the news from the front. He said that he had just come from Gainesville, and that the enemy's skirmishers were then there to the number of about 400, and their main body was not far behind them. I then moved on up the road, and in a short time our own skirmishers reported that they had discovered the enemy's skirmishers in their front. The column was then halted by General Porter, who was with me. After a little consultation, he directed the batteries to be posted on the crest of a ridge that we had just passed, and the men to be placed in position. I immediately went about that work. After awhile I saw General McDowell and General Porter riding together. They passed off to our right into the woods, toward the railroad; and after a time General Porter returned, I think, alone, and gave me orders to move my command to the right, over the railroad. I started them, and got one brigade, and, I think, one battery, over the railroad, passing through a clearing (a corn-field), and had got to the edge of the woods on the other side of it, when I received orders to return to my former position. I led the men back, and as the head of the column was in front of Hazlitt's battery, which had been put in position, we received a shot from the enemy's artillery directly in front of us. I got the infantry back of the batteries, under cover of the bushes and the crest of the ridge, and posted Waterman's battery on the opposite side of the Gainesville road, and we remained in that position the most of the day. The Sixty-second Pennsylvania Regiment was in front as skirmishers, and we sent forward another regiment (the Thirteenth New York), under Colonel Marshall. Soon after Colonel Marshall went to the front, he sent me word that he thought the enemy was retiring; but in a very few minutes afterward he sent in another report that he was mistaken; that the enemy was forming opposite our left, in the woods; and during the day he sent me several other reports of that same character. The ground in front of us was an open space for 1,000 or 1,200 yards; I do not know but what more. Beyond that it was wooded, and near the Gainesville road the woods made a considerable of a point down toward our position. A little while before sunset—just about sunset—I received an order, in pencil, from General Porter to make dispositions to attack the enemy. That order spoke of the enemy as retiring. I knew that could not be the case from the reports I had received, and also from the sounds of the firing. I immediately sent back word to General Porter that the order must have been given under a misapprehension; but at the same time I began to make dispositions to make the attack in case it was to be made. Colonel Locke soon after came to me with an order from General Porter to make the attack. I told him (and I think in my message to General Porter I spoke of the lateness of the day) that we could not do it before dark. Before I got the men in position to make the attack, the order was countermanded, and I was directed to remain where I was during the night. General Porter himself came up in a very few minutes afterward, and remained with me for some time. It was then just in the gray of the evening, between dusk and dark. I then put my men in position for spending the night. I sent out another regiment on the railroad, which was some distance on our right, and put one of my brigades near Waterman's battery, and Berdan's regiment of sharpshooters on their left, with Griffin's brigade supporting Hazlitt's battery, and Butterfield's brigade in rear of Griffin; and in that way we passed the night.

Question. At this time of the day, from about sundown to the gray of the evening, while the question of an attack by your command appears to have been pending, what, to the best of your knowledge and judgment, was the state and course of the main battle on your right, between the main body of the enemy and General Pope's troops?

Answer. It seemed to be a considerable distance on our right, and to be receding from us. I could not express any opinion as to the distance, as the country was all wooded between us. I could only judge from the sound of the artillery. Just at the close of the day there were one or two volleys of musketry.

Question. If you formed at the time any impression as to the distance, will you please state it?

Answer. I cannot, any further than I have already.

Question. About what hour of the day did you first hear musketry firing in force and volume?

Answer. There were a few shots exchanged between our pickets and those of the enemy when we first came upon that ground, and a few scattering shots during the day. With that exception, I did not hear any until the volleys I have just spoken of.

Question. Seeing your own position and that of General Porter's command, so far as you knew it, at the period of the day in question, between sundown and the gray of the evening, and seeing all that you knew and believed of the position of the enemy at that time, please to state whether an attack by General Porter's command upon the right flank and rear of the enemy at that time was possible.

Answer. The only attack we could have made at that time would have been directly in our front. The firing of which I spoke was far to the right, and at that time we could not have got there. The troops of the enemy in front of us were under cover in the woods. If we had moved forward, we would have gone over this open space, where our men would have been exposed to the fire of the enemy without any possibility of effectively returning it.

Question. Such being the case as to a movement on your left to attack the enemy by flanking him on his right, please to state whether you could have passed through the woods on your own right in any good order, to attack the enemy in that direction.

Answer. I doubt whether we could have got our artillery through, even by daylight. We might have passed through the woods with our infantry, but not in any fighting order at all.

Question. Would it have been possible to carry your artillery through that wood at night?

Answer. No, sir; I think not.

Question. To go back now to the evening of the 27th of August, please to state whether, at any time during that evening or that night, you heard Capt. Drake DeKay say that Hooker was out of ammunition, or mention the special necessity of marching punctually at 1 o'clock that night.

Answer. No, sir; I do not remember either.

Question. Were you present at the time when Captain DeKay would naturally have made any verbal additions to, or representations of, the state of the case in connection with the order which he delivered?

Answer. I was there when he delivered the order, and I think he remained as long as I did.

Question. Did you leave there before he did?

Answer. My impression is that we all left there together. I will not be positive on that point, but that is my impression.

Question. At what hour on the morning of the 30th of August did you withdraw from your position, and under what order? Please also state what took place at the time you withdrew.

Answer. A short time before daylight, on the morning of the 30th, I received a written order from General Porter, which I have with me, directing me to lose not a moment in withdrawing, and to come down the road toward him.

Question. Will you read the order, and state the time of its receipt?

Answer. There is indorsed upon the order, in my handwriting, "Received a few minutes before daylight, Aug. 30, '62."

The order is as follows:

General MORELL:

Lose not a moment in withdrawing and coming down the road to me. The wagons which went up, send down at once, and have the road cleared; and send me word when you have all in motion.

F. J. PORTER,
Major-General, Commanding.

Your command must follow Sykes'.—F. J. P.

Question. Do you recollect who delivered that order to you?

Answer. Captain Monteith, of General Porter's staff.

Question. State what took place in consequence of that order.

Answer. I immediately issued the orders to the commandants of brigades and of the artillery to get ready to retire, and to get them in motion as soon as possible. I think General Butterfield's brigade moved first, and then Colonel Barnes' brigade; General Griffin's was to bring up the rear. We called in our pickets. I replaced Hazlitt's battery, which was of 10-pounder Parrott guns, by Martin's battery of brass 12-pounder smooth-bore, to remain in the rear and cover the movement. Butterfield's and Colonel Barnes' brigades moved on up the road. When General Griffin had called in the skirmishers, and was ready to move, I went on myself. Before this, however, it was daylight. I passed the head of General Griffin's brigade, and rode on for the purpose of overtaking the troops in front of us. Not coming up with them, I sent forward one of my staff to ascertain where they were, and to act as a guide for Griffin's brigade in following them. After some time, he came back and said that he could not find them; that he had been as far as Manassas Junction. I supposed that, in compliance with the orders of the previous day, they had gone to Centreville, as we had had no orders to go to any other point. I then turned back until I met General Griffin, and from that point his brigade went on by way of Manassas Junction to Centreville. I was with them.

Question. Was the purpose of keeping Griffin's brigade back the anticipation of an attack on your rear while withdrawing?

Answer. Yes, sir; I supposed that we would be attacked. In the afternoon of the day previous, Colonel Marshall, who was in command in front, sent in a report that the enemy were passing down toward the railroad in the woods on our right, and I supposed that in the morning, at daylight, when the enemy discovered that we were retiring, they would be very likely to attack us.

Question. Did General Butterfield's and Colonel Barnes' brigades get to their destination, or, rather, did they take a different road from the one you took?

Answer. Yes, sir; so I understood afterward.

Question. How soon, after discovering that you had taken the wrong direction, did you proceed to join the command on the battle-field?

Answer. As soon as I discovered it, I went on myself—almost immediately. When we arrived at Centreville, I went to what had been General Pope's headquarters, expecting to find him and General Porter there, and was then informed that General Pope had gone to the front, and that General Porter was probably with him. I was referred to Colonel Clary, of General Pope's staff, and went to him and made some inquiries of him. I immediately wrote a note in his tent to General Porter, stating that I was at Centreville, and was surprised at not finding him there, and that as soon as Griffin's brigade had got some rations—they were out—it would move on to the front. General Griffin's commissary immediately went to work to get rations for the men. I went to where my own teams were, to get some dinner. While there, I heard firing of artillery, the first I had heard during the day. I ordered my horse, and rode to General Griffin, and told him that I heard firing, and that we must move immediately.

He spoke of his men being out of rations, which, he said, were being issued then, and that they were very much fatigued. I told him that I should go on without waiting for him, and that he must follow as soon as possible, and do the best he could. I then went on with my staff, and, when I reached the battle-field, I met two brigades of my own division just coming out of action.

Question. During the whole of the period now in question, say the last two weeks of the month of August, were you in frank and habitual intercourse with the accused, and, therefore, cognizant of his plans, purposes, feelings, and doings?

Answer. I think I was. We were in daily intercourse during the retreat from James River, Harrison's Bar.

Question. Then, please to state when, where, and how, if at all, to the best of your knowledge and judgment, the accused ever failed during that period to exhibit all proper zeal and energy, first, to make junction, when ordered so to do, with the command of General Pope; and, second, to co-operate with that command in faithful duty against the enemy.

Answer. I do not think that he ever failed to do so. Whilst we were marching, he was constantly urging us forward, and was always attentive to see that our supplies were kept up as well as they possibly could be.

Question. Who headed the march of General Porter's corps on the march on the 30th of August?

Answer. I do not know, except from report.

Question. The order you have read directs you, among other things, to follow General Sykes. Do you know where that would have carried you?

Answer. It would have carried us to where the battle of the 30th was fought. Two of my brigades did follow him, and the third missed doing so in consequence of taking the necessary precautions to cover our retreat on the morning of the 30th, when retiring from that position, which delayed us so that we lost sight of the brigades ahead of us.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Will you state whether or not some portion of the command arrived at Warrenton Junction, on the 27th of August last, as early as 10 o'clock in the morning?

Answer. They did not, to my knowledge; none of my division did, I know.

Question. Do you know whether a portion of General Sykes' division did?

Answer. I do not know.

Question. You spoke of a portion of the troops arriving at a late hour in the afternoon of that day; will you state the latest hour at which they arrived?

Answer. Toward sunset, I think, the main body of them; there were some stragglers that came in later.

Question. How many miles had your brigades marched on the 27th of August?

Answer. As I stated yesterday, I think two of my brigades had marched 16 or 17 miles, and the other some 19 or 20 miles.

Question. Do you think that troops having marched from 12 to 18 or 19 miles a day, and rested seven hours, are not in a condition to make another march of 9 miles if there was any great necessity for it?

Answer. If that was their only marching, it could have been done. But we had

been marching from the night of the 14th of August, from Harrison's Bar, with the exception of one day, and being on board of steamers one day and night coming from Newport News to Aquia Creek.

Question. Had, or had not, your troops rested on the 25th of August?

Answer. Yes, sir; but on leaving Falmouth, opposite Fredericksburg, we started at night, and marched all night.

Question. How far had your troops marched on the 26th of August?

Answer. I do not know in miles; we were marching nearly all day.

Question. You have stated that you saw General McDowell and General Porter together on the railroad on the 29th of August. Will you state at what hour you saw them, as nearly as you can?

Answer. It must have been near the middle of the day, I think.

Question. At what point?

Answer. Where my division was posted, to the front.

Question. How far from the junction of the Sudley Springs road with the railroad, in the direction of Gainesville?

Answer. I do not know exactly where that was. I was up in the front all day long; I did not go to the rear at all.

Question. You spoke of having received an order to make a disposition of your forces for an attack on the evening of the 29th of August; have you that order here?

Answer. I have.

Question. Will you produce it and read it?

Answer. [Producing a paper.] This is the order from General Porter:

General MORELL:

I wish you to push up two regiments, supported by two others, preceded by skirmishers, the regiments at intervals of 200 yards, and attack the party with the section of a battery opposed to you. The battle works well on our right, and the enemy are said to be retiring up the pike. Give the enemy a good shelling when our troops advance.

F. J. PORTER,
Major-General, Commanding.

That is the order I received about sunset, or a little before sunset, on the 29th. There is no hour or date to the order.

Question. Was, or was not, that order countermanded?

Answer. Yes, sir.

Question. How soon after its receipt?

Answer. It was countermanded just about dusk, as I have already stated in my direct testimony. I sent a message to General Porter. A message came back by Colonel Locke to make the attack, but very soon after that the order was countermanded, and very soon after that General Porter came up himself. It was then just the gray of the evening, between dusk and darkness.

Question. Have you the order which you state was borne to you by Colonel Locke; if so, will you produce it?

Answer. It was a verbal message.

Question. That verbal order was also countermanded upon the arrival of General Porter?

Answer. It was countermanded before he came himself. I received the order to remain there all night before General Porter came.

Question. You have stated that the battle on your right seemed to be receding. Were you sufficiently well acquainted with the position of the enemy's forces and of our own to form an impression as to whether that indicated that the battle was going against our forces or for them?

Answer. I knew nothing about the exact position on either side. But, from the general position of the forces, if the sound was receding, I was satisfied that the enemy could not be retiring, because, as they were in our front, if they had been retiring they would have approached us. During that day, the 29th of August, there was a large cloud of dust in front of us nearly a good part of the day, coming down obliquely toward our position, and moving toward the right, where the firing took place. The artillery fire was all that we could hear, and that sounded as if it was fired at long range, at long distances; it did not sound like a battle.

Question. You have stated that you lost your way, and went on to Centreville in consequence of having mistaken the road. Do you know why the troops under command of General Piatt also went on to Centreville?

Answer. I do not know; they were not under my command.

Question. Do you know whether they preceded or followed you?

Answer. They could not have preceded us, I think; they must have followed us; but I do not know; I did not see them all; I only know about that from rumor.

Question. Did you arrive on the battle-field in time to take any part in the action of the 30th of August?

Answer. I did not myself; but two of my brigades that were engaged were just coming out of action when I got on the field. I was told that they were among the first to go in and the first out.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. Were you in as good a position for judging of the possibility of attacking the enemy's right or rear, at the time referred to in your testimony, on the 29th of August, as was General Pope?

Answer. I do not know where General Pope was; and I can also say that I do not know where the right of the enemy rested. They were directly in front of our position all day.

Question. You were understood to express the opinion that the right and rear of the enemy could not have been attacked by you at that time. You are now understood to say that you do not know where the right of the enemy then rested.

Answer. The first opinion was expressed, assuming that the right of the enemy was near where I heard the firing, which was at some distance from us; the woods intervening between us and them, the enemy in our front, if we had moved to the right, would have threatened our own left very seriously.

Question. Was it your opinion, on the evening of the 27th of August, that a battle was likely to come off early the next morning?

Answer. I had no information that would have enabled me to form an opinion. There was fighting at that time every day.

Question. At what time of the day, on the 29th, did you countermarch your division for the purpose of moving to Gainesville?

Answer. It must have been between 9 and 10 o'clock in the morning. We had marched directly up from Bristoe Station.

Question. How long were you on the march from Bristoe Station?

Answer. I can only judge from the distance. We left there at 7 o'clock, and moved directly up without any obstacle. The distance was some 5, 6, or 7 miles, and I think we were about two hours in marching it.

Question. On the day that you reached Warrenton Junction, what position did your division occupy in the corps of General Porter?

Answer. I think that General Sykes' division preceded mine, but we were not together, and I cannot speak positively on that point. I did not see them until I saw them in camp. They were in camp when my division arrived.

Question. Did they march on the same road that you did?

Answer. A part of it must have been the same. I was up the Rappahannock, at Kelly's Ford, with two brigades, and another of my brigades was at Barnett's Ford. General Sykes' division, I think, was on the main road leading some few miles back from the river. But before we got to Warrenton Junction, I must have fallen into the same road that he passed over.

Question. On what grounds did you understand the order to attack on the 29th to have been countermanded, and did your troops continue to get into position?

Answer. I do not know on what grounds it was countermanded. We continued to get into position until the countermand was received.

Question. Please mark upon the map before the court, if you can do so, the location of your troops, and also the position of the enemy's right, on the 29th of August.

Answer. The line already marked here [referring to the map] is in about the position where my division was located [the line was marked M. 3]; and, judging from the sound of the firing, the enemy were in front of us and off on our right a considerable distance, just about where this other line [also marked M. 3] is placed. Whether it was nearer or farther off, of course, I cannot tell. The only enemy that I supposed were within my reach was directly in front of us, just about where this line is. I could not see them. I could only judge from the reports. When they opened with their artillery, they were directly opposite my front; and then, a short time after that, some guns opened from the top of a hill off to their left, considerably beyond our right.

Question. At what time of the day did your division reach the position you have just indicated on the map?

Answer. I suppose between 10 and 11 o'clock, or about 11 o'clock in the morning. We marched directly up from Manassas Junction.

Question. Please state whether your troops continued to get into position after dark on the 29th of August.

Answer. They did, for the purpose of passing the night, to be ready in the morning.

Question. Did you see the order from General Pope of the 27th of August, directing General Porter to march at 1 o'clock in the morning of the 28th? If so, did you, or not, infer from that order that a battle would probably be fought on the morning of the 28th?

Answer. I saw the order in the hands of General Porter. I did not read the order and did not hear it read. I did not infer particularly that a battle would be fought the next morning. I knew we were near the enemy, and were likely to have a fight at any moment.

Question. Were, or were not, the precise terms of that order communicated to the generals who were consulted on that occasion?

Answer. I do not think they were any further than as to the hour of marching.

Question. At what time of the day of the 29th did General McDowell arrive on the ground at the head of your column, and at what time did he leave?

Answer. I do not know. I did not see him when he arrived nor when he left. The only time I saw him at the head of the column was when he and General Porter rode off into the woods together.

Question. At what time was that?

Answer. That must have been about noon—about the middle of the day.

Question. Will you look at this paper [handing witness a paper], and say whether you received that from General Porter, and when?

Answer. I received that from General Porter on the evening of the 29th of August, about dusk.

Question. Will you read it, if you please?

Answer. [The witness read as follows:]

Put your men in position to remain during the night, and have out your pickets. Put them so that they will be in line, and on rising will be in position to resist anything. I am about a mile from you. McDowell says all goes well, and we are getting the best of the fight. I wish you would send me a dozen men from that cavalry.

F. J. PORTER,
Major-General.

Keep me informed. Troops are passing up to Gainesville, pushing the enemy; Ricketts has gone; also King.

Question. Will you state whether, in your opinion, the army corps of General Porter could have made better progress on the morning of the 28th of August, under the order of the 27th, by starting at 1 o'clock than by starting at 3 o'clock, or about 3?

Answer. I do not believe they could.

The examination of this witness here closed.

Col. GEORGE D. RUGGLES called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state what position you held in the army commanded by General Pope during the campaign in Virginia last summer?

Answer. I was assistant adjutant-general and chief of staff to the Army of Virginia. That was the order that detailed me, with directions to report to General Pope, the commanding officer of that army.

Question. Did you continue upon General Pope's staff during the whole of that campaign?

Answer. Yes, sir; until he was relieved from the command of that army and ordered West.

Question. Have you any recollection of having seen this paper? [Handing witness a paper.]

Answer. [Examining it.] I have an indistinct recollection of the contents of this paper. The paper is in my handwriting; it is a genuine paper; I know that.

Question. Will you read it?

Answer. [The witness read the paper as follows:]

HEADQUARTERS ARMY OF VIRGINIA,
Warrenton Junction, August 27, 1862—4 o'clock a. m.

Maj. Gen. F. J. PORTER,
Commanding Fifth Army Corps:

GENERAL: Your note of 11 p. m. yesterday is received. Major-General Pope directs me to say that under the circumstances stated by you in relation to your command, he desires you to march *direct to this place* as rapidly as possible. The troops behind you, at Barnett's Ford, will be directed by you to march at once direct to this place, or Weaversville, without going to Rappahannock Station. Forage is hard to get, and you must graze your animals as far as you can do so. The enemy's cavalry has intercepted our railway communication near Manassas, and he seems to be advancing with a heavy force along the Manassas Gap Railroad. We will probably move to attack him to-morrow in the neighborhood of Gainesville, which may bring our line farther back toward Washington. Of this I will endeavor to notify you in time. You should get here as early in the day to-morrow as possible, in order to render assistance should it be needed.

I am, general, very respectfully, your obedient servant,

GEO. D. RUGGLES,
Colonel and Chief of Staff.

Question. Have you any knowledge of this paper? [Handing another paper to witness.]

Answer. [Examining it.] Yes, sir; this paper is in my handwriting. It was dictated to me by General Pope, and signed by him. It was written at the time at which it is dated. August 26, 7 p. m.

A member of the court inquired the object of introducing this paper, bearing date the 26th of August.

The accused replied that he desired to introduce it in order to show that by the change of orders, as indicated by the paper now submitted, and the one just read, the troops under his command were obliged to march a greater distance, and were consequently more fatigued when they reached Warrenton Junction than they would otherwise have been.

The paper was then read, as follows:

HEADQUARTERS ARMY OF VIRGINIA,
Warrenton Junction, August 26, 1862—7 o'clock p. m.

Maj. Gen. FITZ JOHN PORTER,
Commanding Fifth Army Corps:

GENERAL: Please move forward with Sykes' division to-morrow morning, through Fayetteville, to a point within 2½ miles of the town of Warrenton, and take position where you can easily move to the front, with your right resting on the railroad. Call up Morell to join you as speedily as possible, leaving only small cavalry forces to watch the fords. If there are any troops below coming up, they should come up rapidly, leaving only a small rear guard at Rappahannock Station. You will find General Banks at Fayetteville. I append below the position of our forces, as also those of the enemy. I do not see how a general engagement can be postponed more than a day or two.

McDowell, with his own corps, Sigel's, and three brigades of Reynolds', numbering about 34,000, are at and immediately in front of Warrenton. Reno joins him on his right and rear, with 8,000 men, at an early hour to-morrow. Cox, with 7,000 men, will move forward to join him in the afternoon of to-morrow. Banks, with 6,000, is at Fayetteville. Sturgis, about 8,000 strong, will move forward by day after to-morrow. Franklin, I hope, with his corps, will, by day after to-morrow night, occupy the point where the Manassas Gap Railroad intersects the turnpike from Warrenton to Washington City. Heintzelman's corps will be held in reserve here at Warrenton Junction until it is ascertained that the enemy has begun to cross Hedgeman's River.

You will understand how necessary it is for our forces to be in position as soon as possible. The enemy's lines extend from a point a little east of Warrenton Sulphur Springs around to a point a few miles north of the turnpike from Sperryville to Warrenton, with his front presented to the east, and his trains thrown around well behind him in the direction of Little Washington and Sperryville.

Make your men cook three days' rations, and keep at least two days' cooked rations constantly on hand. Hurry up Morell as rapidly as possible, as also the troops coming up in his rear. The enemy has a strong column still farther to his left, toward the Manassas Gap Railroad, in the direction of Salem.

JNO. POPE,
Major-General, Commanding.

Question. Will you state whether you were present, on or about the 1st or 2d of September, when a conversation took place between General Porter and General Pope in relation to General Porter's conduct of the previous days? If so, state what you heard of it, if you heard any portion of it.

Answer. I was present at Fairfax Court-House, in a room in a private house there, where General Pope had his headquarters, on the morning of the 2d of September, 1862—Tuesday morning. The several corps commanders had been sent for, General Porter among the rest. I was engaged at the time writing orders for the positions of troops. This was just previous to the receipt of a telegram from the General-in-Chief, ordering General Pope to move the army back to the intrenchments around Washington. While I was writing these orders, General Porter and General Pope had a conversation, lasting about twenty minutes. I think there was nobody else in the room except myself. Whilst studiously avoiding overhearing the conversation, I heard scraps enough of it to know that they were talking about the incidents of the few days previous. At the conclusion of the interview, General Pope and General Porter got up, and I heard General Pope say to General Porter that his explanations were satisfactory with the exception of the matter of the one brigade. I think he said "entirely satisfactory," though as to the word "entirely" I cannot swear positively. I knew the matter of the one brigade meant Griffin's brigade, from my knowledge of what had happened at that time. I think General Porter replied, "That can be easily explained," though I am not positive about his answer.

Question. Did you afterward, and, if so, at what time, remind General Pope of that conversation?

Answer. My recollection is, that I reminded him of that conversation on the 5th or 6th of September last.

Question. Do you mean by that, that you reminded him that he had said to General Porter that he was satisfied with what he had done, with the exception you have stated?

Answer. My recollection is, that I reminded him that he had made that remark.

Question. What answer, if any, did General Pope make to you?

Answer. I do not remember that he made any answer.

Examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. You have stated that you only heard this conversation in scraps; that you studiously avoided hearing it. Can you repeat any of the portions of it except that which you have given in your testimony?

Answer. I cannot repeat any other portions of it, because it did not impress me particularly, except this one remark.

Question. Do you remember that, in the course of that conversation, a dispatch or letter was spoken of, which severely criticized the military conduct of General Pope, and which was said to have been sent by General Porter to General Burnside?

Answer. No, sir; I do not. I was on one side of the chimney, and General Pope and General Porter were sitting on a sofa on the other side of the chimney. I did not see any dispatch, and do not remember of hearing any.

Question. Did they converse in a low tone of voice?

Answer. They conversed so that I could not hear the whole of the conversation. I overheard some sentences. This last remark, after they had arisen, was in a tone loud enough to have been heard by anybody who might have been in the room.

Question. Not having heard the whole of the conversation, and not being able now to report any portion of it, can you undertake to say to what that expression of satisfaction referred?

Answer. I can state only what was my impression at that time, from what I heard at the time.

Question. Under what circumstances were you subsequently led to refer to your having overheard this conversation?

Answer. General Pope told me that he did not wish to appear as a witness against General Porter, but that he should summon me as the principal witness. I told him that I was not acquainted with all the circumstances of the case; that, though chief of staff, I had been employed as an aide-de-camp during much of the time from the 25th of August up to the time of the battle of Chantilly, on the 1st of September; and that orders had been issued by him that I knew nothing of. He then said to me, "You know that such orders were given?" I answered, "Yes, sir." He said, "And you know that they were not carried out?" I answered that that was what I had been told; that that was my impression. He then said that that was sufficient; that he would have me summoned as the principal witness. Then, according to my recollection, I reminded him of this conversation. I felt that I was not sufficiently conversant with the case, and I immediately reported this conversation to the Adjutant-General of the Army, and to Colonel Kelton, the Assistant Adjutant-General at the headquarters of the army, and requested that General Pope might be summoned as a witness in the case. They both told me that he should be summoned, and both of them also told me to see Colonel Holt about it. I intended to see Colonel Holt about it, but before doing so I understood that the order for the trial had been suspended, and the impression was that there would be no trial. I therefore took no further action in the matter.

Question. You say that, according to your recollection, you reminded General Pope of that conversation at Fairfax Court-House. Is the court to understand you that your recollection is entirely distinct; that you have full faith in its accuracy; that you have no doubt about your having made that reference?

Answer. I am not positive about it; that is simply my recollection. I would

not wish to swear that I did remind him of that conversation, though it is my impression, my recollection, that I did, when he told me that he should call me as the principal witness, but I will not swear positively, because my recollection is not positive upon that point. It is with regard to the rest.

Question. What reply, if any, did General Pope make to your reminding him of that remark?

Answer. I do not recollect that he made any reply.

Question. Where, and in whose presence, did the conversation take place in which you think you reminded General Pope of that remark?

Answer. It was on the road from Arlington house to Washington City, by way of Georgetown. There was one officer of General Pope's staff with us, one of his aides, but who it was I do not now recollect. My impression is that it was Colonel Morgan, though I cannot say positively.

Question. Are you able to state whether that conversation was heard by this officer who accompanied you?

Answer. I think it was not heard by him. I think he was riding some distance from us.

Question. Are your feelings toward General Pope kind and friendly?

Answer. I can hardly say that they are, from the treatment I received while upon his staff.

Question. Can you not answer that question more distinctly, and say whether, at this time, your feelings are friendly or hostile to General Pope?

Answer. I am on speaking terms with General Pope, but I would not like to serve with him as a staff officer. I would call upon him as a matter of respect, if he were in the city.

Question. Have you, or not, entertained the impression that you were badly treated by him in your official relations to him or otherwise?

Answer. I entertain, and I have entertained, the opinion that I was badly treated by him in both official and social relations. To explain that, I will say that there was considerable trouble between General Pope and several of his staff officers, and I was one of those. I thought several times that I was not treated as a gentleman should have been treated.

The examination by the judge-advocate here closed.

Examination by the ACCUSED resumed:

Question. Were you summoned by the Government to testify in this case?

Answer. I was summoned by the Government.

Question. Who discharged you, and why?

Answer. On the 16th of December I reported to the judge-advocate of this court that I had been detailed as judge-advocate of a court-martial, to be convened at West Point on the 18th of December, and asked him if I should be needed in the case of General Porter. After some conversation, he told me that he did not think he would need me, and said that he thought I had been summoned as a witness for the defense. I told him no; that I was a witness for the prosecution. He then told me I might go to West Point, and, if my presence was required here, I would be telegraphed for. I went on, and on the evening of the 23d of December I received a telegram to come on here.

Question. From whom?

Answer. It was signed by the Adjutant-General.

The accused admitted that that telegram had been sent at his request.

The examination by the accused here closed.

Examination by the COURT:

Question. Was the order of the 29th of August, issued by General Pope to General Porter, to attack the enemy on their right and rear, a practicable order or not, in your opinion?

Answer. I can hardly state whether it was or not. I had not been on the ground where the movement was to be effected, and during the 29th I had been away from General Pope a great deal of the time, acting as an aide-de-camp, according to the best of my recollection, and did not see the communications which he received that day, and I am not prepared to say whether this order could have been carried out or not.

Question. Did your order from the Adjutant-General's Office direct you to report to General Pope as his chief of staff?

Answer. It detached me for duty as chief of staff for the Army of Virginia, and directed me to report for duty to General Pope, commanding that army. It was upon that ground that I applied to be relieved when General Pope was relieved from the command of the Army of Virginia. I contended that I did not belong to his staff, but to the Army of Virginia, and, when that army ceased to exist, I was liable to be subject to other orders.

Question. At what time did the action of the 29th of August commence, and for how long a time did the musketry fire continue?

Answer. The first cannonading that I heard on that day was an hour or two after sunrise; the cannonading was resumed, I think, about 8 o'clock, and continued at intervals until after dark. The night before that battle General Pope had camped on the road from Manassas to Centreville, where that road crosses Bull Run Creek. The first cannonading I have spoken of, I heard while riding with General Pope near the heights of Centreville. We had then just crossed a bridge. We then went to Centreville, and remained there until in the neighborhood of 11 o'clock—either a little before or a little after that time, I cannot say which; we then went on to the field. I do not know positively that there had been musketry fire before that time, but I heard musketry firing from that time until dark.

The examination of this witness was here closed.

The court then adjourned to 11 a. m. on Monday next.

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WASHINGTON, D. C., *December* 29, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were read and approved.

Maj. Gen. GEORGE W. MORELL, after hearing his testimony read, made the following explanation:

I am satisfied, upon reflection, that the order of the 29th to attack was not countermanded prior to the receipt of the order to pass the night where I was. I construed the order to pass the night there as being virtually a countermand of the order to attack. I was making dispositions to pass the night when General Porter joined me.

Examination resumed by the COURT:

Question. Please state whether you made, or ordered to be made, any reconnaissance of the enemy's force in your front on the 29th of

August, by which you were enabled to form any reliable opinion as to the position and strength of the enemy?

Answer. Only by throwing skirmishers to the front a considerable distance, and also to the left.

Question. How long a time elapsed from the receipt of the order to attack until you received the order to pass the night where you were?

Answer. The order to attack was received just before sunset, and the order to pass the night was received about dark.

The examination of this witness here closed.

Col. GEORGE D. RUGGLES, having heard his testimony read, made the following explanation:

I should like to make an explanation in regard to the testimony I have given here. A question was asked me about the order assigning me as chief of staff to the Army of Virginia. I would like to add that that order was issued at the request of General Pope, so as to show that I was not assigned to him without his consent. As to the trouble between General Pope and his staff officers, I would say that ill-feelings were entertained toward him by certain of his staff officers, myself among the number, in consequence of his treatment of us in our official relations. But subsequently, while at Fairfax Court-House, General Pope apologized to me for that treatment.

Examination resumed by the COURT:

Question. Was, or was not, the musketry fire on the 29th of August, which you have spoken of in your testimony, indicative of a severe engagement between large bodies of men?

Answer. The musketry fire was; but I desire to say that I did not hear the musketry firing myself until I came on the ground. The musketry firing which I heard after I came on the ground indicated an engagement between large bodies of men.

Question. When did the conversation occur between General Pope and yourself, in which you think you referred to his conversation with General Porter at Fairfax Court-House—after your return to Washington?

Answer. It was after the army had been withdrawn to within the intrenchments around Washington.

Question. Will you endeavor to recall, if you can remember, whether or not General Pope, in reply to your reference to the former conversation, stated that since his return to Washington he had had information communicated to him which had induced him to believe that the explanations which had been made to him by General Porter were not made in good faith?

Answer. I do not recollect to have heard him say anything of the kind.

Question. You think he made no reply at all?

Answer. I think so. The only thing he ever said to me upon that subject was, that he thought that when they got his report in Washington it would make a big stir, or some commonplace expression of that kind, and that was not said at that time.

Question. What are your feelings toward General Porter?

Answer. They are not particularly friendly or unfriendly.

Question. What was the opinion in regard to General Porter, if you know it, that was entertained by General Pope and the members of his staff preceding the 27th of August, when General Porter joined the command of General Pope?

Answer. I do not know. I do not remember to have heard the subject referred to before that morning—the morning of the 27th of August.

Question. What was said at that time in reference to General Porter?

Answer. I cannot state definitely what was said; but I know that on the morning of the 27th of August, at Warrenton Junction, near General Heintzelman's headquarters, or between those and the telegraph office, General Pope told me that his impression was that he would not receive much support from the command that was coming up from the James River, meaning the Army of the Potomac; and he conveyed to my mind the idea that he was not very favorably impressed with General Porter.

Question. Did you receive yourself any unfavorable impression in regard to General Porter in consequence of conversations at General Pope's headquarters previous to the 27th of August?

Answer. I was rather prejudiced against General Porter in consequence of what I heard at headquarters.

Question. Will you state what those conversations were, what was said, and by whom said?

Answer. I cannot state specifically what they were; but they were to the effect that, in the opinion of General Pope and his staff officers, General Porter was not giving a hearty support to General Pope. I heard that from General Pope and from some of his staff officers. I cannot specify the names of the staff officers.

Question. Have you held any conversation with the accused in reference to the subject of this trial since the last meeting of this court?

Answer. Yes, sir; on Saturday evening last.

Question. Will you state what conversation you did hold with him on last Saturday?

Answer. As I was going up town on Saturday evening, I stopped at General Porter's quarters, and told him that, instead of getting off that evening, or on Sunday, I should be detained until Monday; that the judge-advocate would, perhaps, ask me a few more questions. And I then told him that I was afraid the court might think I was biased in his favor; that I desired to say to him that I was not particularly biased in his favor. I went on to make some explanation in regard to that, speaking of our serving together, and of my trial at West Point by a court-martial of which he was a member. I said that, if necessary, I could state that I was not biased in his favor. I also mentioned that I desired to put the record straight, with regard to the difficulty between General Pope and myself, according to the explanation I have made here this morning.

Question. Who requested you to remain until Monday?

Answer. The judge-advocate of this court.

The examination of this witness was here closed.

Brig. Gen. CHARLES GRIFFIN called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state your rank and position in the military service in August last?

Answer. Brigadier-general of volunteers, and captain in the Fifth United States Artillery.

Question. In whose army corps?

Answer. I belonged to the Fifth Army Corps, then commanded by Maj. Gen. Fitz John Porter; in General Morell's division.

Question. About what time on the 27th of August did you arrive at Warrenton Junction with your brigade?

Answer. About sundown.

Question. How far did you march that day?

Answer. We had marched from Barnett's Ford, on the Rappahannock. We left

there about 7 o'clock on the morning of the 27th of August. We estimated the distance to be from 18 to 19 miles.

Question. What was the condition of the troops under your command on the evening of the 27th, with respect to fatigue?

Answer. They were very much broken down. I mean by that that they were very weary. We had a great many stragglers that day.

Question. Do you remember whether the day of the 27th of August was hot and dusty?

Answer. It was a very warm day. I do not recollect as to the dust.

Question. State what was the character of the night between the 27th and the 28th of August.

Answer. The night of the 27th and the morning of the 28th were very dark. It rained a little about 10 o'clock that night, I should think; very little, just sprinkled.

Question. What was the condition of the road between Warrenton Junction and Bristoe Station during that night and in the morning?

Answer. I did not know the condition of the road that night, nor did I know it in the morning; that is, the entire road. The question is not definite.

Question. I mean with reference to the obstructions which you met, if any.

Answer. I received an order about 12 o'clock on the night of the 27th of August to move my brigade at 3 o'clock in the morning. At 3 o'clock in the morning I started from camp toward Bristoe Station, and marched about a mile or less to where I halted, and there I remained at the head of my column until about two hours after daylight. I know that the artillery which followed the brigade, that is, a carriage or two of the artillery which followed the brigade, got stuck in the mud, or in a little creek, and had trouble in getting out. I also know that at 3 o'clock it was very dark, so dark that I used candles with my leading regiments to get through a little piece of woods which we left, in which we had been encamped. I also know that there is a bad place for artillery at Catlett's Station. There is a very steep hill there, and also a piece of woods where the road is winding, and which would have made it difficult for artillery carriages to pass along, especially on a dark night. In fact, along on all the road to Bristoe Station there are several little places that would be very bad for artillery to pass over at night—almost impossible in a dark night—that might be passed over in the daytime.

Question. What caused you to halt when you did halt?

Answer. I halted because I found, when I got to the point where I did halt, that I had only a portion of my brigade with me. In the darkness, by some accident or other, we had become separated, and I halted to get my brigade together; and the artillery, I presume, is what detained us there until we started again. That is my impression; I do not know that positively. General Morell was in command of the division.

Question. What time was reveille that night?

Answer. As near as I can recollect, reveille was at half-past 1—about an hour and a half before we started.

Question. If you had attempted to start at 1 o'clock, what would have been the proper time for reveille, considering the condition of the command and the state of the night?

Answer. We generally allow two hours for a command to get ready; sometimes only an hour and a half, as in this instance. Reveille ought to have been at least at half-past 11, if we had started at 1 o'clock; I mean, of course, to give the men time to get their breakfast. We allow time to get breakfast, and to get ready to march. An hour and a half is as little as any command can do that in.

Question. With a view to reaching Bristoe Station as early as possible that morning, and doing duty there, would it have been expedient or judicious to have started at 1 o'clock that night?

Answer. I think decidedly not.

Question. Please state your grounds for that conclusion.

Answer. I think if we had started just at daylight that morning, we would have arrived at Bristoe Station, if the road had been clear, even sooner than we did by starting at 3 o'clock in the morning; for we would have made use of the two hours of daylight that we were lying in the road. I mean by that, of course, that I think if we had started by daylight, we would have left camp properly, and would not have had the stoppages that we had.

Question. On the morning of the 29th of August, do you know of dispositions having been made to place your command and other parts of General Porter's corps in order for battle?

Answer. On the morning of the 29th, we marched from Bristoe Station to Manassas Junction. My brigade was leading the division, and following Sykes' division. We halted at Manassas about a half an hour, when I received an order to countermarch, and proceed in the direction of Gainesville. After finding the direction, I moved on the road pointed out to me toward Gainesville. I had marched about 2 miles, having passed King's division in the road, when a cavalryman said, "Look out; a trooper has been taken here, just in front a short distance." I asked him what forces were in front. He said none, except it was a few mounted men. I halted my brigade, threw four companies of the Sixty-second Pennsylvania to the front, with directions to move on in advance about half a mile, throwing out flankers to the side and skirmishers to the front.

Question. About what hour of the day was this?

Answer. We left Manassas Junction, I should think, about 9 o'clock in the morning.

Question. Go on and state what then occurred.

Answer. I then moved on until we came to a cleared place, where our skirmishers commenced firing with the enemy's pickets, probably 5 miles from Manassas Junction. At this point General Porter rode up, and we halted. I also ordered the other eight companies of the Sixty-second Pennsylvania to the front to support those that were already out as skirmishers. This regiment has twelve companies. General Porter then called together General Morell, General Butterfield, and myself. I think we all got off our horses. He said, "I have a communication to read to you." He then read us a communication, I do not know by whom signed, but it was from General Pope—that is, I have always supposed it was, and understood it to be read as a communication from General Pope. We then went back to the rear on a hill, say 300 yards distant. A battery, I believe, was placed in position there. We were there some time, when General McDowell rode up. General McDowell and General Porter went off to the right of where we stood, and held a conversation there for a half an hour probably, more or less. I was not present at the conversation, and cannot tell anything about that. I think there was a map taken out. After the conversation, General McDowell rode to the right. I received an order, almost directly after General McDowell had left, to recall my pickets, and orders to move my command to the right. I attempted to go to the right, and moved probably 600 yards, until, with the head of my column, I crossed a railroad said to run to Gainesville. Here we met with obstructions which we could not get through. It was reported by somebody, I cannot say who, "You can't get through there." We then faced about, and moved back to the hill where the battery I first referred to was stationed. As we were getting to this hill, the enemy's batteries opened upon us. My brigade was then placed in position in rear and to the right of the batteries, and remained there during considerable artillery firing; I cannot say how long. The disposition was certainly one to repel an attack. It was a very good position for that purpose.

Question. Do you remember the general character of that communication which was read to you by General Porter?

Answer. I can state my recollection of it. The communication, as I recollect it, was to this effect: that the troops would try to make a junction at Gainesville; but, although they might get to Gainesville, it might be necessary, before morning or that night, to fall back to Centreville on account of rations.

Question. To whom was the communication directed?

Answer. General Porter read the communication as coming from General Pope. I supposed it was addressed to General Porter from General Pope. I did not read it, and I could not swear positively that it was read correctly.

Question. From about 5 o'clock to about 7 o'clock of that afternoon,

what was the position of the enemy in relation to the position of General Porter's corps?

Answer. That is a hard question to answer. I do not know much about the enemy; I only know that during the day large clouds of dust were going to our front and to our left, from a point stated to us then to be passing through Thoroughfare Gap. There were large clouds of dust all that afternoon, in fact nearly all day, as nearly as I can recollect, coming from a point said to us to be Thoroughfare Gap; I should say it was 3 or 4 miles from where I was, fully that; I except, of course, these batteries that opened on us about 1 o'clock. They were nearer; they were within 1,200 or 1,500 yards of us; we saw no force at all; we saw scattering groups of horsemen or of infantry. I do not believe we saw in any one group over 40 men.

Question. What was the character of the country, as seen from your position, lying between you and the enemy?

Answer. At one point in front of us the woods came, I should think, to within 600 yards of us, and just back of the battery, where this battery was stationed, it appeared that it ran off into a valley. It had that appearance; I have not been over the country there. It would appear that men would come over the hill and look at us, and then they would drop back.

Question. Were there woods between you and the enemy which you would have had to pass through to reach them?

Answer. Directly in front of us there were woods. There was a little cleared strip or field to our right, which seemed to run right up to the top of this hill.

Question. At that period of the day was it practicable for General Porter, by a movement to his left, to outflank the enemy or attack them on their right flank?

Answer. I can only state my opinion. I have stated that the enemy seemed to be coming from Thoroughfare Gap. In fact, there is not a doubt, if that point was Thoroughfare Gap, that the enemy was coming through there all day. To have got in rear and flanked the enemy, General Porter would certainly have had to turn Thoroughfare Gap, as I understand it, though I have never been over that ground.

Question. Do you know of the receipt of any orders by General Porter from General Pope to attack the enemy on that afternoon?

Answer. I do not.

Question. Do you know of any orders having been given by General Porter on that day to attack the enemy?

Answer. I know that General Morell received one somewhere near sundown; it may have been a little before or a little after.

Question. What then took place?

Answer. We had started back toward Manassas Junction when this order came down the road. The order was carried by an orderly, and was stopped by Colonel Warren, who read it. We faced our command about immediately, and started back. We were probably a mile and a half or two miles from the position referred to in my previous testimony as occupied by this battery. After I had faced my brigade about, I rode ahead to General Morell, who had received the order, and asked him if he was going to attack. He replied, in substance, "No, it is too late; and this order has been given under a wrong impression." I do not know but that, in justice, I ought to state what the substance of that order was. The substance of that order was, "That the enemy are retiring or retreating; attack and pursue him vigorously." That is, as nearly as I recollect it, the substance of it. General Morell said to me, "Colonel Marshall, who commands the pickets in front, states that the enemy are receiving re enforcements."

A member of the court objected to the witness stating what others had said; he desired him to confine his testimony to what he knew of his own knowledge.

The accused wanted to know if the latter part of the answer already given by the witness would be allowed to remain upon the record.

At the request of a member of the court, the court was cleared.

After some time the court was reopened, and the judge-advocate announced that the court decide that the witness proceed in his testimony; the court expect that the accused will confine the witness, as nearly as possible, to the subjects under investigation by this court.

Examination resumed by the ACCUSED:

Question. Do you know that the enemy were, in point of fact, retiring at the time you saw General Morell?

Answer. I feel very positive that he was not retiring just at dark.

Question. Did your command spend the night in the place they then occupied, or very near it?

Answer. Yes, sir.

Question. About what hour the next morning did you commence to move?

Answer. Just as day was beginning to break.

Question. What did you know of the direction you were to take?

Answer. I understood from the staff officer that brought me the order that the division was to follow General Sykes.

Question. Please to state now, as briefly as possible, what route you took, and how it happened that you reached Centreville.

Answer. We went back the same road we came down from Manassas Junction. I went with my command to Centreville, by direction of my commanding officer (General Morell), who accompanied me.

Question. Do you know what route General Sykes took?

Answer. I do not, except from hearsay.

Question. In proceeding, as you did, toward Centreville, did you, or not, suppose that you were following on after General Sykes?

Answer. I supposed we would find the entire corps at Centreville when we arrived there.

Question. Did you see any other forces belonging to General Porter's corps on the way?

Answer. Near Manassas Junction we passed General Sturgis, with Piatt's brigade. He said that he had been directed to follow Sykes, and wanted to know which way he had gone.

Question. Did you take the road which you did take in the belief that it was the road that Sykes had taken, or that it would lead you to the same place where Sykes had gone?

Answer. I took the road, believing that we would all meet at Centreville. I have reasons to believe that General Sykes took another road.

Question. When you say that you have reasons to believe that Sykes took another road, do you mean that you have reasons now, or that you had at the time?

Answer. I had at the time.

Question. What reasons had you at the time for thinking that he had taken a different road?

Answer. As we were going up the road, a man with his hat and coat off stood by the side of the road, and said, "The regulars—Martindale's and Butterfield's brigades—went this road." That is the only reason I had to believe that they took a different road.

Question. Were you present at the headquarters of General Porter on the evening of the 27th of August?

Answer. No, sir.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Did I understand you correctly as stating that you do not know why the detention until two hours after daylight occurred on the morning of the 28th of August?

Answer. As I stated before, I know that some of the carriages of the artillery got stuck in a little stream, and, after I had halted, General Morell directed me to remain until I got further orders.

Question. You have mentioned various obstacles to the passage of artillery over that road as you passed over it on the morning of the 28th of August. Do you know whether General Porter knew of the existence of those obstacles on the evening of the 27th of August?

Answer. I do not.

Question. Did General Porter make known to you and to the other generals of his corps the urgent reasons assigned by General Pope for his corps to be at Bristoe Station by daylight on the morning of the 28th?

Answer. He did not make them known to me. I do not know what he made known to his other officers.

Question. Did you, on the 29th, make a reconnaissance to the front, or order one to be made, to ascertain the force of the enemy that opened their artillery upon your troops?

Answer. Not after the artillery opened, that I know of. Before that we had a whole regiment to the front as skirmishers. We took three mounted prisoners, I know.

Question. Do you believe you had in front of you any considerable force of the enemy?

Answer. Yes, sir; I believe that in the course of the day we had the larger part of Lee's army.

Question. Immediately in front of you, I mean. I do not mean in the remote distance.

Answer. According to my recollection and impression at the time, they formed a line a little obliquely to our front, extending back to Thoroughfare Gap. They were coming from Thoroughfare Gap toward us.

Question. You mean by that to say that in the course of the day they passed by you in your front; not that they passed in their march, and put themselves in position for action.

Answer. I mean that heavy bodies of troops were passing from Thoroughfare Gap down toward our front all day long—that is, that they passed. Some of them may have been 3 miles, some of them may have been 5 miles, and some of them may not have been over 2,000 yards from us.

Question. Do you not know that the field of the battle of the 29th was some 2 miles to your right, and did you not hear firing in that direction all day?

Answer. On the 29th I heard no firing whatever, except artillery at a long distance. That is, I can call to mind no other firing. In the evening, a little after dark, there were some very heavy volleys of musketry, the enemy evidently driving our troops right before them. That musketry was to our right and front, I should say 2 miles, may be not so far; may be farther. I should have stated, when I stated that I heard no other firing but artillery, that in the morning we had some skirmish firing.

Question. You spoke of having returned from the movement you made to your right, in consequence of obstacles that you encountered. What was the character of those obstacles, and what efforts did you make to overcome them?

Answer. I led off my column. We ran up into some little thick pine bushes. We halted there. The next order I got was to move back again. Some one reported that we could not get through. I made no reconnaissance whatever myself.

Question. What road did General Sturgis, with General Piatt's brigade, take from Manassas, when that general inquired of you what road General Sykes had taken?

Answer. They followed immediately in the rear of the brigade that I commanded.

Question. Why did you not follow General Sykes, if such were your orders?

Answer. That morning, before leaving the position we had occupied all night, I was directed to bring up the rear. I threw out pickets of my brigade, and relieved all the others, and after the other commands were in motion, as reported to me by General Morell, I recalled my pickets, and got in motion as soon as possible. The other commands must have had a half an hour the start of me. We never overtook them at all; never got in sight of them.

Question. How far was your front from the Gainesville and Centreville pike, do you suppose?

Answer. I do not know.

Question. Do you know whether General Sturgis and General Piatt, with their forces, reached the field, and took part in the action of the 30th of August?

Answer. I do not.

Question. Did you, or not, on your march that morning, hear the guns of that battle?

Answer. No, sir; we heard them after we arrived at Centreville.

Question. Not until then?

Answer. No, sir; I should think we heard them about 4 o'clock in the afternoon, at Centreville.

Question. Did you, or not, hear General Porter, at any time during the 27th, 28th, 29th, and 30th of August, criticize General Pope's military conduct, or his capacity for generalship, unfavorably? If so, will you state the substance of such criticism?

Answer. I never did. I never heard him, to my recollection, mention General Pope's name but once. On the 29th of August, General Porter said, "My orders are very conflicting. I first receive them from this officer, and then from that officer; officers whom I do not know and have never seen, and they are brought to me by orderlies. I have written General Pope a note, requesting of him hereafter to send all his orders to me in writing." That is the only time that I recollect of ever hearing General Porter mention General Pope's name. As I have stated before, when he read that communication to his generals, he stated that it was from General Pope. In reference to any transactions between himself and General Pope, I never heard him speak of him but that once, at the time I have mentioned.

Examination by the judge-advocate here closed.

Examination by the COURT:

Question. When on your march to Centreville, on the morning of the 30th of August, did you suppose your command was advancing or retiring, with respect to the enemy?

Answer. I cannot say that I formed any idea about that.

Question. Were the troops that you supposed were coming through Thoroughfare Gap taking position in your front as they arrived, or were they passing to your right, in the direction of Groveton?

Answer. They were going farther toward the mountains. They passed, as it were,

in our front, but were some distance from us to our right and to the left of Centreville. That was my impression; of course, I do not know.

Question. Did, or not, the order which you received from General Morell to march to Centreville on the morning of the 30th emanate from General Porter?

Answer. That I did not know at the time. General Morell showed me, on the afternoon of the 30th, about 4 o'clock, the order he had received to follow Sykes.

Question. On the march from Warrenton Junction to Bristoe Station, on the morning of the 28th of August, what was the position of your brigade in the corps of General Porter?

Answer. I started out ahead, but I halted. After that the regulars (Sykes' division) were moving toward Bristoe Station, and passed us. After that I occupied the center of General Morell's division; was the second brigade in the division.

Question. At what time in the day of the 29th of August did General McDowell ride up and have a conference with General Porter, and at what time did he leave?

Answer. General McDowell rode up, I should judge, somewhere between 12 and 1 o'clock, and he remained there, I should think, a half an hour. That is my recollection.

Question. What was the position of your brigade in the division of General Morell, when marching in column toward Gainesville, on the 29th of August?

Answer. I was in front.

Question. What distance did General Morell's division move in retreat on the afternoon of the 29th, previous to the order for attacking the enemy?

Answer. I should think my brigade, as I have stated, moved a mile and a half or two miles; not far from a mile and a half. I do not think the battery left the hill at all.

Question. You have stated that you did not think it judicious to leave your position on the morning of the 28th until daylight; would you not have considered it judicious to move at 1 o'clock in case you had had positive orders from your commanding general to do so?

Answer. All orders should be obeyed when it is practicable to obey them. It certainly was not practicable to move a large body of troops at 1 o'clock on the night of the 27th or the morning of the 28th, and over a road about which we had no knowledge.

Question. You stated that the enemy were going to your right and rather to the left of Centreville; would or would not that line of march have taken them to the battle-field on your right and rear to Groveton?

Answer. I do not know where Groveton is. I have never passed over the pike between Gainesville and Centreville, except from Bull Run to Centreville.

Question. Will you look at the map which is on the table, and see if you cannot answer that question more satisfactorily?

Answer. [Having looked at the map.] According to this map, it would have taken them somewhere in the neighborhood of Groveton.

Question. Would it have been practicable to have moved infantry toward Bristoe Station had the march been commenced at 1 o'clock on the morning of the 28th—such a body of infantry as was at Warrenton Junction at that time?

Answer. If we had got into the road and started at 1 o'clock, the first brigade would probably have got there if the road had been clear. We always march first a brigade, then a battery, then a brigade, and then a battery, and so on. The first battery would have blocked the road somewhere, so that the rest would have had to remain until daylight before they could move; probably at the first run, right there in our own camp.

Question. The question supposes that there was to be no artillery; it relates to infantry alone.

Answer. It is probable that we would have got through one brigade of Morell's division.

Question. Have you stated that on the morning of the 30th you had reasons to believe that General Sykes had taken a different route from the one that you took?

Answer. Yes, sir.

Question. Why did you not follow the road that you thought that General Sykes had taken?

Answer. I went with my commanding officer (General Morell). I had nothing to do with the direction at all. I was merely a subordinate.

Question. You have been asked whether infantry without artillery could have made their way, on the night of the 27th of August and on the morning of the 28th, to Bristoe Station; will you state whether, in your opinion, any officer receiving an order of that description would have moved without his artillery unless he was specially ordered to do so?

Answer. Most certainly not.

Question. Was General Morell present on the 30th, when you received the information from the man of whom you have spoken as to the route taken by the regulars?

Answer. He was not.

Question. At what time on the 30th, if at all, did you move from Centreville toward the battle-field?

Answer. I should think about 5 o'clock in the afternoon.

Question. What prevented your getting to the field?

Answer. The road was blocked up by wagons and stragglers coming toward Centreville, and the bridge at Cub Run was broken through, so that it was impossible to get past it at all.

Question. Did you go to the bridge, or how far did you go?

Answer. I got to the bridge with the head of my brigade.

Question. You have stated that the enemy, as you supposed from the columns of dust, were moving in the direction of which you have spoken; would you have known whether they were forming in your front, or would the reports, if any, have been made to your commanding officer (General Morell)?

Answer. I suppose that it would have been reported to General Morell, though I do not know. I cannot state what other officers would do under similar circumstances.

Question. You have been asked how far you went when you were retreating on the evening of the 29th. Did you understand your corps to be retreating at all that night?

Answer. No; I do not know that I did. I supposed that we were going to change position somehow; that we had failed to get through on the right during the day, and that we were going to shift to some other position; where, I did not know. We did not connect with anything on our right or on our left.

Question. Had you an opportunity of seeing General Porter from the time he joined the command of General Pope, and of witnessing his actual conduct on the march?

Answer. I saw General Porter several times.

Question. Had you any conversation with him, from time to time, when you saw him?

Answer. No particular conversation that I can call to mind. I recollect speaking to him.

Question. From what you saw of his conduct, and from what you heard from him, will you state whether he exhibited any indisposition to do his duty to his commander-in-chief and to the country?

Answer. I supposed at the time, and I have ever supposed, that General Porter exhibited his usual energy and zeal to move ahead. One thing that made me think so, was our long march from Barnett's Ford to Warrenton Junction, which nearly broke down the whole command. Now, I come to think of it, I do call to mind a little conversation that occurred at General Porter's camp at Bristoe Station. He said that General Ricketts occupied Thoroughfare Gap, and we thought we had Jackson in a trap, and that we would nab him; and the next morning when we moved I thought we were going down to be in at the taking of Jackson. That is the only thing I call to mind now.

Question. Did you mean to say, in answer to the question about moving an army, when positively ordered to do so, that it is not common in emergencies to move infantry in the night, and leave a force to bring up the artillery afterward?

Answer. I have yet to know an instance of our leaving our division artillery when we have been moving by land.

Question. You say that you had failed to get through to the right during the day of the 29th of August. Will you state what efforts were made by you, or by General Porter, to get through on the right during that day?

Answer. I merely obeyed orders. My position was at the head of my brigade. What efforts General Porter made, I am not aware of.

The examination of this witness was here closed.

The court thereupon adjourned to 11 a. m. to-morrow.

WASHINGTON, D. C., *December* 30, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

Brig. Gen. JOHN F. REYNOLDS called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state your rank and position in the service during the campaign of the Army of Virginia?

Answer. I was a brigadier-general, commanding the division of Pennsylvania Reserves. I was attached to General Porter's corps, in the Army of the Potomac. My command was the first troops from the Army of the Potomac to join the Army of Virginia.

Question. To whose corps in the Army of Virginia were you attached?

Answer. After leaving Rappahannock Station, at which point my division joined the Army of Virginia, I was temporarily attached to General McDowell's corps, the remainder of General Porter's corps not having yet come up. We separated there, as it were, from the forces coming up from Fredericksburg.

Question. Where were you with your command on the night between the 27th and 28th of August last?

Answer. At Buckland Mills, between Warrenton and Gainesville.

Question. Were you proceeding from Warrenton to Gainesville on your way there?

Answer. We were on the march until after dark.

Question. Did you march during the night?

Answer. No, sir; we bivouacked at Buckland Mills, going into camp just about dark.

Question. What was the character of the night?

Answer. It was a very dark night, as was the succeeding night. I recollect both of them distinctly, from having been about a good deal until after 12 o'clock on each night.

Question. Did you consider it too dark a night in which to march troops in masses over an unfamiliar country?

Answer. I should think so, certainly, without a guide or marching on roads. I do not think it possible to have marched troops on such a night without having a good guide or marching on a road.

Question. If the road over which you were to pass were, to some considerable extent, obstructed in several places, would you have regarded the marching of large masses of troops on that night as practicable?

Answer. I should not. I should have considered it as a very precarious undertaking.

Question. When marching from Gainesville toward Manassas, on the 28th of August, in what order did you march, and by what route?

Answer. On the morning of the 28th, after passing Gainesville for a short distance—less than a mile—my column was directed to the right, to march on Manassas. I intended to march in as open order as possible, but found the country such that I put my command in three columns, one brigade in each column, with the artillery in the interval, and marched in that formation for probably a mile, or a mile and a quarter, in the direction of Manassas. The country then became so broken, wooded, and obstructed, that I had to turn into a road leading along the railroad from Gainesville to Manassas Junction, and finally marched on that road, in one column, around to Bethlehem church, toward the old battle-field of Bull Run, late in the evening.

Question. Between New Market and Groveton, what was the character of the country?

Answer. Very broken by ravines, and wooded. I will state that I know that from having passed over it on horseback that night, from somewhere in the neighborhood of New Market over to the Warrenton pike, near Groveton.

Question. In your judgment, could a command have passed over that country in force, with artillery, in proper order to face an enemy?

Answer. I should think not, in the immediate presence of an enemy.

Question. Please to state the position of your command on the 29th, in the afternoon, and the distance between your left and General Porter's command.

Answer. On the 29th I was on the left of General Sigel's command, engaged with the enemy, who was then wholly on the right of the Warrenton pike, as we faced it; General Sigel moving up obliquely across the pike; I was on his extreme left. I had

no knowledge of General Porter's position at that time, but I suppose that the nearest he must have been at any time was within two and a half or three miles, probably three miles, across this broken country.

Question. We understand you to state that the country between you and the command of the accused was broken country?

Answer. Yes, sir; between my left and the position where I understand the troops of the accused to have been at that time. I did not know then they were there.

Question. On the 29th, before 4 o'clock p. m., what was the character of the battle—artillery or infantry?

Answer. Principally artillery.

Question. About what time did the infantry fire commence in force and volume?

Answer. As near as I can recollect, it must have been between 4 and 5 o'clock, probably 5 o'clock; that is. I refer to the part near me. There may have been infantry firing on the right which I could not hear.

Question. Had you opportunity to observe and know the conduct of the accused as an officer, the zeal displayed by him in the discharge of his duties during the month of August, up to the time he was going to join the Army of Virginia?

Answer. I served under General Porter on the Peninsula and up to the time that we embarked at Harrison's Landing, my division going by water from Harrison's Landing to Aquia Creek, the remainder of the corps going by land as far as Old Point Comfort. I have had opportunities to judge of General Porter's conduct, and I have always considered him an energetic, faithful, and devoted officer.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. You say that the night of the 27th of August was too dark to have marched troops over a country not known to them, without either a guide or having a road to follow. Suppose they had a road, and a guide who had passed over the road a few hours before, who was acquainted with it, or professed to be acquainted with it, and who proposed to conduct the army, and that army was to march during that night over one of the country roads of Virginia, would it have been practicable to do so?

Answer. I suppose it would.

Question. Was there not considerable and heavy infantry firing about 11 o'clock a. m. on the 29th, and at intervals from that time to 3 o'clock p. m.?

Answer. There was some firing at intervals, but I do not recollect any very heavy infantry firing.

Question. You say that a command with artillery, &c., could not have passed over the country between New Market and Groveton in the immediate presence of the enemy. Was not the ground equally bad for the enemy as for General Porter? And if the enemy could take position there, why could not General Porter's troops have taken position against them?

Answer. It was impossible to maneuver troops over that country. They could take position there, of course, and they could be attacked in position by troops; but it would have been very difficult to have got artillery up through that broken country, and a very disadvantageous attack would have been made.

Question. You do not seem to catch the point of the question. It is simply to inquire whether, in your judgment, the disadvantages were

not equally as great for the enemy as they would have been for General Porter's troops.

Answer. Yes, sir; for him to have occupied a position, it would, except that he (the enemy) had a road leading directly into it, from which he could file off into it, and which he did make use of; that is, the Warrenton turnpike leading down there. I suppose that would give him the advantage.

Question. What do you think would have been the effect on the battle of the 29th had General Porter's command of more than 10,000 troops engaged the enemy about sunset on that day?

Answer. I am hardly able to give an opinion of what the result would have been. As I have stated in my evidence, I did not know at the time where General Porter was on that day. Of course, if he had made a successful attack on the enemy, the result of the contest would have been different. I will state, further, that I do not know now what position General Porter's troops occupied at sunset on that day.

Question. Assuming that General Porter's command was on the Gainesville road, in a position to have attacked the enemy's right flank at sunset, what would have been the effect of such an attack made by 10,000 fresh troops at sunset?

The accused objected to the question as presupposing that the witness knew where the right of the enemy was at that time. If the question be put as to Jackson's right, or if the witness knows where the enemy's right was, and what it was, he (the accused) would offer no objection.

Question. Do you, or not, know where the enemy's right flank was on the afternoon of the 29th, say toward sunset?

Answer. I was on the extreme left of our troops, facing the enemy, and their right toward sunset had been extended across the pike, with fresh troops coming down the Warrenton turnpike; but up to 12 or 1 o'clock it was not across the pike, and I had myself made an attack on their right with my division, but was obliged to change front, to meet the enemy coming down the Warrenton pike. I was forming my troops parallel to the pike, to attack the enemy's right, which was on the other side of the pike, but was obliged to change from front to rear on the right, to face the troops coming down the turnpike. That was, I suppose, about as late as 1 o'clock, and they continued to come in there until they formed and extended across the turnpike.

The accused here withdrew his objection.

Question. Will you now answer the question as to the probable effect upon the battle of an attack made about that hour on the right flank of the enemy by General Porter's command?

Answer. Supposing General Porter's command to have been on the road from Gainesville to Manassas Junction?

Question. Yes, sir.

Answer. A vigorous attack made there ought to have resulted favorably to our success; ought to have contributed greatly toward it, certainly.

Question. Did you, or not, pass over the country stretching from your left toward General Porter's position on the 29th, while on the march from Gainesville toward Manassas Junction?

Answer. Not with my command.

Question. Did you see any of the enemy's forces, on the 29th, on the south of the pike leading from Gainesville to Groveton, and do you not know that the right of the enemy's line rested on the north of that road?

Answer. Their line changed during the day. It was on the right up to 12 o'clock, or about that time. In the afternoon it was extended across the pike. I cannot state how far; the country was very wooded there, and I could not see how far across it was. I thought at the time they were extending it that afternoon until dark.

Question. You have stated that the country between your left and General Porter's position was a broken country. Will you look at the map, which is on the table, and designate at what point, in making that statement, you assumed the command of General Porter to have occupied at that time?

Answer. [Going to the map.] This map is very inaccurate, and as a military map is not worth much, particularly this portion of it [indicating the portion referred to]. My left was somewhere about here [indicating the place by the letter R], and I take it to be about two miles and a half in a straight line across to where General Porter was, as I understood it [pointing to place marked M. 3.]. If there had been no troops in his front, I suppose he could have made the attack.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. On the night of the 27th of August last, how far was your position from Warrenton Junction?

Answer. I suppose it was some 10 miles across from Buckland Mills to Warrenton Junction.

Question. Did you, or not, pass at all over the road from Warrenton Junction to Bristoe Station at any time during the nights of the 27th and 28th of August?

Answer. No, sir; I was on the Warrenton pike, from the town of Warrenton to Gainesville, on the night of the 27th.

Question. On the 29th of August did, or did not, the enemy's right outflank your left at any time?

Answer. I think it did toward evening. It was late, not dark; toward the dusk of the evening.

Question. Will you look at the map, and point out the positions your division occupied on the 29th?

Answer. The division was maneuvering almost all the morning, and indeed the whole day, in action on that day, up to 12 o'clock, with what was supposed to be Jackson's forces, which were in there the day before. [The witness indicated upon the map several positions as occupied by his division during the day.]

Question. Did the enemy outflank you at sunset on the 29th?

Answer. My division, with a brigade of Sigel's corps, lost its connection, for a time, with the remainder of General Sigel's corps, but at sunset we had closed in to the right, so that the enemy, I think, did outflank us at sunset. That is, I think his flank extended beyond ours, although distant from us; not near enough to be engaged.

Question. Did the enemy that forced you to change front take position between your command and that of the accused on the 29th?

Answer. I think his position was partially between myself and the position occupied by the accused, as far as I can judge. I wish the court to remember, in all this testimony, that I had no knowledge at the time where General Porter was. I knew that troops were over toward Manassas, and was expecting to have them brought up on my left. I was informed that such would be the case; but they were not brought up there.

Question. Did you think that the force of the enemy, of which you have spoken, was large?

Answer. I thought it a pretty heavy force. I thought it amounted to about a division. It extended, apparently, as far as my division did.

Question. Did not the enemy, in attacking the left and rear of General Pope, on Saturday, the 30th of August, pass with artillery and infantry over much of the country that General Porter would have had to pass over on the 29th to attack the right of the Confederates?

Answer. I think not. I think he had gotten in, as it were, between that broken

country and our position on that day; occupying a ridge which crossed the turnpike there, and having the broken country behind him, because I maneuvered the day before (29th) all over up to that broken country, and got partially on that ridge with one brigade.

Question. Could so large a force as passed around your left on Saturday have done so without passing over a long distance toward where General Porter was?

Answer. He had the Warrenton turnpike open to him, and, by coming down that turnpike, he filed in off that turnpike, as I supposed, at different points through this broken country. He had that advantage in coming down and occupying this ridge.

Question. You have stated the decisive or good effect of an attack, in the latter part of the afternoon of the 29th of August, by the force of the accused upon the flank of the enemy, if it could have been made. Is that statement made upon the assumption that the enemy were not strongly posted before the command of General Porter in his front at that time?

Answer. I made that statement upon the supposition that he could have made an unimpeded attack upon the right and rear of the enemy.

Question. Was the movement of the enemy on Saturday, of which you have spoken, by which they turned the flank of our army, unopposed; and, if so, how long a time did they take to effect that movement?

Answer. I should say that the movement was unopposed for the greater portion of the morning.

Question. Reference is made to the time of their getting on the ridge.

Answer. I conceive them to be on the ridge early in the morning.

Question. And were they gathering from that time until the main attack was made, when they became opposed?

Answer. I supposed so, although I could not judge of that. I was myself up in the front, and found them in heavy force to the front and on my left by a personal reconnaissance.

Question. At what time was that main attack made by the enemy; at what hour of the day?

Answer. I have no distinct knowledge of the exact time when that attack was made; I suppose it to have been somewhere between 12 and 2 o'clock.

Question. Do you know when the enemy commenced the movement, of which you have spoken, to draw around General Pope's left flank?

Answer. I supposed it commenced about the time I changed front, on the afternoon of the 29th, between 12 and 1 o'clock; it may have been after 1 o'clock. I suppose that to have been the commencement of that movement; their re-enforcements were constantly coming up, and their line was extended accordingly; they commenced throwing troops out on Jackson's right as they came up, and extended their right out along the ridge.

The examination of this witness here closed.

Maj. GEORGE HYLAND, Jr., called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. What is your position in the Fifth Army Corps, and what was it during the latter part of August?

Answer. I was major of the Thirteenth New York, the second regiment in the First Brigade of General Morell's division of General Porter's corps.

Question. Where were you on the 27th of August last?

Answer. I was with my regiment, on the march from Kelly's Ford to Warrenton Junction.

Question. At what hour did your regiment arrive at Warrenton Junction?

Answer. They arrived there about dusk of the 27th.

Question. What was their condition, as regards fatigue?

Answer. They were very much fatigued and worn out. They also needed provisions, as they had had no provisions that day to any amount.

Question. At what hour did you march the following morning?

Answer. About 3 o'clock.

Question. Where were you on the morning of the 29th of August?

Answer. On the march from Bristoe to Manassas Junction.

Question. Where did you go from Manassas Junction?

Answer. We went on the Gainesville road; on a road to the front leading to Gainesville, I supposed; I did not know at the time what road it was.

Question. How was your regiment employed on the afternoon of the 29th?

Answer. It was employed as skirmishers.

Question. How was it situated with respect to your command—Morell's division?

Answer. We were to the front of Morell's division.

Question. How long were you so employed?

Answer. We were so employed from about 1 o'clock of the afternoon of the 29th until daylight of the next day (the 30th).

Question. What other regiments were engaged in the same duty?

Answer. The Twenty-second Massachusetts and Berdan's Sharpshooters were placed on our left in the evening.

Question. Was there any enemy formed in your front during that time?

Answer. There was.

Question. Do you know at what hour they commenced forming, or about what hour?

Answer. They commenced forming between 2 and 3 o'clock, I think.

Question. Do you know the route by which they came?

Answer. They came from a direction which I was told was from Thoroughfare Gap. There appeared to be two columns of them.

Question. And along what road?

Answer. They came down the railroad, as I supposed at the time, and filed to our right.

Question. Can you point out on the map before the court the position occupied by your regiment, and the position occupied by the enemy on that day?

Answer. [The witness indicated the position on the map.]

Question. Were the enemy at any time forming on your left and front?

Answer. No, sir; I did not see any enemy to our left; there was none there that I was aware of.

Question. Did they pass at all to our right of the railroad?

Answer. Yes, sir; they passed to our right and front; I could hear them very distinctly.

Question. Have you any knowledge of their forming to attack during that day?

Answer. Yes, sir; I could hear the commands plainly, as if forming in line; I could hear the movements of their artillery coming into position.

Question. Did any of their artillery open upon you during the day?

Answer. The artillery to the right of our skirmishers opened upon us.

Question. Not the artillery that was in your front?

Answer. Not directly in our front.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. How far, in front of General Morell's command, did your regiment, in its duty as skirmishers, proceed in the direction of the enemy?

Answer. Probably from 800 to 1,000 yards.

Question. What is the character of the country there?

Answer. The country in front of us was quite heavily timbered. Between us and General Morell's division, the country was an open country, with a deep ravine there, and a stream running through it. In front of us it was heavily timbered, and there was also some scrub pine.

Question. Can you state about what force of the enemy took position in front and right of your regiment, as deployed in advance of General Morell's division on the 29th?

Answer. I could not state the number, but it appeared to be a very large force, indeed.

Question. Can you state how many thousands, or divisions, or regiments?

Answer. I could not state the number of thousands or divisions. I judged from the movements, and from the commands given, that there was a very large force, indeed; probably a larger force than we had.

Question. Did you report this force to General Porter or to General Morell?

Answer. I reported to Colonel Marshall, my commanding officer.

Question. Do you think the force of which you have spoken was sufficient to have made a successful resistance to General Porter's entire corps?

Answer. I do.

Question. Do you base that opinion upon the supposition that the enemy had there more than 10,000 or 12,000 men?

Answer. I could not state the thousands. But from what information I had, and from what I could get from the other officers, I thought their force was very heavy, indeed. I should think there were probably 10,000 troops in front of us, judging by the columns of dust that I also saw coming from the same direction.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. In your answer as to the strength of the enemy in front of you, do you take into consideration the location of the enemy as adding strength to his position?

Answer. I do.

The examination of this witness here closed.

Brig. Gen. GEORGE SYKES called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state your rank and position in the army?

Answer. I am a brigadier-general of volunteers and major of regulars.

Question. To what corps were you attached in August last?

Answer. I commanded a division under General Fitz John Porter, of the Fifth Army Corps.

Question. If you were in General Porter's tent on the evening of the 27th of August, at the time when Captain DeKay brought General Porter an order from General Pope, will you state the conversation which then occurred, or immediately afterward, as nearly as you can recollect it, and what was done about that order?

Answer. About 10 p. m. on the 27th of August, General Porter sent for me. We were then encamped at Warrenton Junction, Va. In his tent I met General Morell, General Butterfield, and Capt. Drake DeKay. General Porter informed me that he had received an order by the hands of Captain DeKay, directing his corps to march at 1 o'clock a. m. on the 28th. We talked it over among ourselves, and thought that nothing was to be gained by moving at midnight or 1 a. m. rather than at dawn. I was very positive in my opinion, and gave General Porter my reasons: They were, first, that a night march is always exceedingly fatiguing and injurious to troops; that my command had already marched from 12 to 14 miles that day; that I thought the darkness would cause confusion; that a constant stream of wagons had passed ahead of us from the time my command reached Warrenton Junction until dusk; and, above all, I thought that as but two hours or three hours at most would elapse between 1 o'clock and daylight, we could make the march in much better order, and march more rapidly, by starting at dawn than if we started at the hour prescribed. I might add that General Porter made his decision not to move until daylight, and I took it that that decision was based upon his own experience and upon the opinions of the three general officers in his corps next in rank to himself.

Question. Did you understand the hour for the movement of the troops to be fixed at 3 o'clock?

Answer. I cannot say that I did. But as my division led, I know the hours at which I fixed the reveille and the advance. Reveille in my own division was beaten at 2 or 2½ o'clock a. m., and the advance was sounded as soon as I could distinguish the road. I generally allow an hour and a half or two hours between reveille and the advance.

Question. State the character of the night, and any reports made to you by your aides as to the difficulties in starting before daylight, if any such were made.

Answer. The night was unusually dark. Before I directed the advance to be sounded, I sent an aide-de-camp to find the road, so as to lead the column upon it. He returned in a short time, and told me that the darkness was so great that he could not distinguish the road. He also told me that he was assisted in that search by several soldiers.

Question. State what you recollect of any difficulties which you met with in the road which impeded your march that morning, and what steps were taken to remove such difficulties, if any existed.

Answer. As I anticipated, we ran upon this train of wagons within 2 miles of my camp; they encumbered the road for miles. Myself and staff officers were constantly engaged in opening the way for the head of my column. On several occasions I had to take my mounted escort, and place them on the road, with drawn sabers, to prevent the wagons from closing up any interval that occurred. I do not think that in my military life I ever had so much trouble with a train as I had that day. The wagon-masters and teamsters were alike insubordinate. About 2 miles from Bristoe Station, a stream crossed the road. On the Bristoe side of the stream, General Porter and his staff officers directed and compelled all those wagons to be parked, so that none of them should precede my troops. That order was carried out. I was compelled to halt the head of my command on the Bristoe side of that

stream for fully an hour, in order that my rear brigades might be united with the brigade in advance; and the cause of this separation was the train or trains on the road.

Question. In your judgment, would anything have been gained by starting at 1 o'clock, in the way of early arrival or efficient service at Bristoe Station?

Answer. Nothing whatever. And I may add, that if there was any military necessity for the movement to be at 1 o'clock a. m. on the 28th, it did not appear on the 28th, when we reached Bristoe Station. As I understood it, General Pope was there in person when we arrived, about half-past 10 o'clock. My command was thrown in position a little in advance of Bristoe; remained there all that day; we camped there that night, and we did not leave until an early hour on the 29th. General Pope being there in person, the only inference was that he sanctioned our camping at that place. My men, when they reached there, were fresh, and could have gone wherever it was desired.

Question. Passing, now, to the afternoon of the 29th; were you with General Porter, when, in the afternoon or in the beginning of the evening of that day, a messenger, an officer, came from General Pope, bringing to General Porter a written order? If so, about what hour did he arrive?

Answer. I was with General Porter nearly throughout that whole day; that officer arrived as near sunset as I can remember; certainly within a little before sunset, or about sunset.

Question. Were you, during the month of August, in intimate and continual intercourse with General Porter?

Answer. I was.

Question. Did you ever see in him any slackness to do his duty; any evidence of a disposition to fail his commanding general or his country?

Answer. No, sir; I never have. General Porter is an officer whose zeal is so well established that I hardly see the necessity of that question. I would like to add that General Porter's foresight, his providence for the wants of his command, and his attention to all the minutiæ of his command are such and so great, that I have often thought that he relied or trusted too little to the capacity of his division commanders. He seemed to do everything himself.

Question. Do you consider that he pushed his command forward pretty vigorously from Falmouth to the scenes of the actions of the 29th and 30th of August?

Answer. I do.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Do you know the officer who, on the 29th of August, bore to General Porter the order of which you have spoken?

Answer. I do not.

Question. Do you know whether you saw him when he first arrived, or was it on his second arrival?

Answer. I think it was on his first arrival. General Porter and I were seated together at the time.

Question. Was there any action taken, or any order issued, immediately on the receipt of the message which that officer bore?

Answer. I think that some aides-de-camp of General Porter were sent out. I am not positive on that point; but I think Captain Monteith was sent out.

Question. Did General Porter make known to you the character of that order?

Answer. He did not.

Question. Did he read it in your presence?

Answer. Not that I know of.

Question. Did you see any order delivered to him by this messenger?

Answer. I saw a communication delivered to him; I do not know whether it was this order or not.

Question. How long did you remain with General Porter on that occasion, after the receipt of this order?

Answer. I continued with him from that time all night.

Question. At what place was this order received?

Answer. At a place called Bethlehem church, I think; I know it was.

Question. You had, then, as I understand you to say, no knowledge that a positive order had been given by General Pope on that afternoon for General Porter to attack the enemy on their right flank?

Answer. I had no such knowledge.

Question. Where was your command at that time?

Answer. My command, at the time of the reception of this order, lay between Bethlehem church, on the Gainesville road, and the position, probably a mile in front, that we had reached in moving out on that road. I was immediately behind General Morell's troops on that road.

Question. Was the order which was received at Warrenton Junction on the night of the 27th, and which was the occasion of General Porter's calling his generals together, read in their hearing?

Answer. I do not know that it was read; I think General Porter passed it to us all; I think we all read it.

Question. Do you remember whether you were made acquainted with the urgent language of the order, stating that by all means General Porter must be at Bristoe Station by daylight the next morning?

Answer. No, sir, I think not; for I am satisfied that, if that urgency had been made known to us, we would have moved at the hour prescribed.

Question. I will read the order in your hearing, so that you may be enabled to say whether you remember the terms of the order as having been made known to you at that time. [The judge-advocate then read the order referred to, as set out in specification first of charge first.] Do you recall that order as one with the terms of which you were made acquainted at that time?

Answer. I suppose it is, but I cannot recollect it at this distance?

Question. Do you, or not, believe that the terms of that order are sufficiently urgent, so that if they had been impressed upon you at that time you would have felt it to be the duty of the command to advance in accordance with it?

Answer. Well, sir, knowing the obstacles that we would have to encounter, taking into consideration the darkness of the night, and believing, as I did, that we could reach the point we were desired to reach by moving at daylight as well as at that hour, those considerations would have influenced me, as they did, not to move until dawn.

Question. Did General Porter criticize the military conduct, capacity, or generalship of General Pope unfavorably during the days of the 27th, 28th, 29th, and 30th of August last, in your hearing?

Answer. I cannot say that he did.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. How far had your division retired, previous to the reception of the communication of which you have testified by General Porter, on the 29th of August?

Answer. I do not know the precise distance. I was in support of Morell's division, which was under the fire of the enemy. We moved back to Bethlehem church, where the road forked.

Question. At what hour on the morning of the 28th did your command commence its march toward Bristoe Station?

Answer. We commenced it as soon as I could distinguish the road; I did not observe the precise hour; I take it to have been about half-past 3 o'clock.

Question. Are you to be understood as saying that had you received an order from General Porter to march at 1 o'clock a. m. on the 28th, with the knowledge which you then had of the road and of the obstructions on it, and the condition of the troops, you would not have obeyed it?

Answer. If I had received such an order from General Porter, of course I would have obeyed it.

Question. After starting for Bristoe Station, did you continue your march without stopping until you arrived there, and did you lead the column?

Answer. I led the column on that morning, and I continued my march to Bristoe Station, with the exception of the usual halts which commands always have, to allow men to pass to the rear, and the one that I spoke of at the creek, where I said I found it necessary to halt my command for some time in order to unite it.

Question. About what was the strength of your command?

Answer. My command was composed of three batteries of artillery and about 4,400 or 4,500 men.

Question. Making in all about how many men?

Answer. About 4,750, I think.

Question. Would it have been impracticable to have moved the infantry on to Bristoe Station, had they left at 1 a. m., as ordered?

Answer. It would not have been impracticable, but I think it would have resulted in so much breaking up of the command and so much confusion that it would have been a false military movement.

Question. You say that if you had received an order from General Porter to move at 1 o'clock a. m. on the 28th of August, you would have obeyed it. If you had been in the place of General Porter, and had received such an order from General Pope, would you have obeyed it?

Answer. The same influences which determined my opinion, as given to General Porter, would have determined it if the order had come from General Pope to me.

Question. An officer commanding a corps, receiving an order from his commanding general, 8 or 10 miles off, ought he not, in determining the best mode of executing that order, to exercise a degree of discretion which would not be proper in a division commander receiving an order from his commanding officer on the spot?

Answer. He ought to exercise a degree of discretion undoubtedly, and such a degree of discretion as would not be proper in an immediate subordinate.

The examination of this witness was here closed.

The court thereupon adjourned to 11 a. m. to-morrow.

WASHINGTON, D. C., *December* 31, 1862.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. Joseph Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

Maj. Gen. AMBROSE E. BURNSIDE was then called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. You are the major-general commanding the Army of the Potomac?

Answer. I am.

Question. In August last, while the accused, General Porter, was on his march to join the Army of Virginia, was he under your command, with orders from you to protect the line of the Rappahannock and its fords?

Answer. Yes, sir; in connection with other orders.

Question. Did you, during that period, direct or request him to send you, by telegraph or otherwise, what information he could gain concerning the military situation in Virginia at that time?

Answer. I did.

Question. Did you receive such information from General Porter, from time to time, by telegraph?

Answer. I received from him frequent telegrams, as well as some verbal and written messages by orderlies.

Question. Did you regard the sending you such information, and the conclusions of the accused thereupon, as an official act done by him in the performance of his duty, under your direction?

Answer. I did. The relations between General Porter and myself, in forwarding these troops, were such that I did not consider it necessary always for his language to be formal; and I did not consider it necessary for me always to give him a written order for any act I desired him to do. I was temporarily in command of that point, and the forces were forwarded through me, and all the officers knew very well that they were to receive their orders from me, and they were very considerate in carrying out their spirit, without there being much formality, because there was not much time for formality. Our communications may frequently have been somewhat informal, but they were in spirit entirely of an official nature. So informal were they, that I may have sent communications to General Porter that I do not know anything about to-day; I may not have kept any copies of them, for there was not much time for anything of the kind.

Question. From your observation of General Porter's military conduct, and from your knowledge of him as an officer, what opinion have you formed of him touching his attention and fidelity to his duty and his zeal in its performance?

Answer. I have never seen anything to lead me to think that he was anything but a zealous, faithful, and loyal officer.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Will you state whether at the time these dispatches were received from General Porter—say between the 26th and the 29th of August, inclusive—any of them excited in your mind the apprehension that General Porter might not be inclined to do his whole duty as a subordinate under the command of General Pope?

Answer. I received no such impression as that from the dispatches. I saw in General Porter's dispatches exactly what I heard expressed by a large portion of the officers with whom I happened to be in communication at the time—a very great lack of confidence in the management of the campaign. It was not confined to General Porter. I saw in his dispatches, and I told General Porter himself so, what may have been indiscreet language, but nothing that led me for one moment to feel that he would not do his whole duty. So much was I impressed with that, that I consulted my chief of staff on two or three occasions in reference to forwarding those telegrams, and we both decided—I certainly decided without any impression that there was anything expressed in them more than a lack of confidence—to send them, because they were the only means of communication with General Pope that we had. The President of the United States came to the telegraph office every morning at 7 o'clock, to request me to send him any information that I might have, and I did not feel myself authorized to withhold anything from him that would tend to give him a correct impression of what was doing on that line, and I sent the telegrams to General Halleck and to General McClellan—a copy to each.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. Was, or was not, General Porter under your command between the 26th and the 30th of August last?

Answer. I considered that General Porter was not under my command, positively, after he had been entirely relieved from all the duty of guarding the fords of the Rappahannock; but I also considered that, from the understanding that existed, he was under obligations to furnish me with all possible information within his knowledge. I had the impression that we were entirely disposed to co-operate with each other. So much so was this the case, that I had constructed, as rapidly as possible, a telegraph along the line of the Rappahannock, with a view of communicating with him, and I myself took the care of forwarding him his supplies, even after he had joined General Pope, because I had heard from him and from others that there was a lack of supplies; and after the last day there, I think he must have received a large wagon train sent by me for the purpose of supplying his command. I am not sure about the date, however. But I never lost the impression that I was in every way to assist him, and to keep in communication with him, as well as to assist General Pope in every way that I could. But I felt more under obligation to keep open communication with General Porter and the troops that had left my command.

Question. At how early a day did the accused express a want of confidence in General Pope?

Answer. I cannot locate the moment that I ever heard him verbally express that lack of confidence. I meant by my answer to convey the idea that I took the expressions in his dispatches to mean just about that much. It is altogether likely that he did express that lack of confidence verbally to me; but I meant to express the idea that it was a general impression. The first written dispatch from him containing any such expressions, I suppose, must have been at the time that he reached Catlett's Station, and saw a large portion of the wagons going to the rear; if I mistake not, that is the first thing I can locate. There was one very striking expression which I noticed, that the trains were going very rapidly to the rear; but I have not seen those dispatches from that day to this.

Question. Would you recognize them if shown to you?

Answer. Yes, sir; I think I would. I had my private secretary make copies of some of them, and send them to the judge-advocate of this court. I did not examine the copies myself.

A dispatch from General Porter to General Burnside, dated Warrenton Junction, August 27, 1862, 4 p. m., was then shown witness, who examined it, and said, "This, I think, is the first dispatch I received

from General Porter containing any such expressions. I am almost sure that none of his dispatches while on the Rappahannock conveyed any such impression to me."

Question. The question was intended, if possible, to find out whether General Porter went into that department—that command—with unfavorable impressions toward General Pope, or whether those impressions were gained after he was on the ground.

Answer. He moved his troops off rapidly, and marched them at night, and everything within my limits appeared to me to indicate that he was determined to get his troops up there as rapidly as possible; I saw nothing to indicate the reverse.

Question. Are you of the opinion that the impression in the army with regard to General Pope was of such a character as might have tended to the embarrassment of his military operations?

Answer. I think it was.

Question. Was it from the dispatches you received from General Porter that you first learned, or formed the opinion, that he lacked confidence in the management of the campaign under General Pope?

Answer. I think not; I felt that he did not have confidence in him when he first started to join him; but, still, I cannot locate any time when I ever heard him say one word against General Pope.

Question. Were the expressions of the officers you refer to, relating to the policy of the operations of the Army of Virginia, confined to officers belonging to the Army of the Potomac?

Answer. No, sir.

Question. Did the doubts of those officers seem to relate to the general policy of the movement of the Army of Virginia toward the Rapidan or the Rappahannock Valley, or to the mode of its execution under General Pope?

Answer. I never heard any objection to the plan that made any impression upon me; but there was a strong distrust as to General Pope being able to carry out the plan.

Question. At what time was General Porter relieved from guarding the fords of the Rappahannock?

Answer. That question I cannot answer as to dates. I sent troops up to relieve him as soon as they could be spared, and I held the fords of the Rappahannock for several days after General Pope left that line, and brought in some of the guards he had left at Rappahannock Station.

Question. Was it, or not, before General Porter joined the command of General Pope that he was relieved from this duty of guarding the fords?

Answer. I think General Porter had joined General Pope before he was entirely relieved from the duty of guarding the fords. That has always been my impression; that the head of his column had joined General Pope some time before he ceased to guard all the fords.

Question. At what place, so far as his military duties were concerned, was General Porter supposed to be entirely under the command of General Pope?

Answer. When he joined him, I suppose.

Question. After General Porter joined the army of General Pope, was he under your command in any way, except to make these reports to you?

Answer. To make these reports and to be supplied by me. So far as military operations were concerned, he was under General Pope's command; but on that line I

considered that there was entire "co-operation." Probably there was no more rejoicing in any place in the United States than in our camp when General Pope sent in his dispatch that he had beaten the enemy. General Halleck sent the dispatch to me, and I sent a dispatch back to him that we were jubilant over the success of General Pope. I think the dispatch from General Halleck to me and the one from me to General Halleck will explain more of the animus of the feeling between the two commands than anything else can. The dispatch from General Halleck was, that General Pope had been fighting two days, thus far successfully; and I telegraphed back to him that we were all jubilant over General Pope's success, which was the case.

Question. Was, or not, the objection or distrust mentioned by you as existing among the officers who seemed to feel a want of confidence in General Pope, more in the nature of an exception to him as a man than to his capacity as a commanding general?

Answer. I think it was.

The witness proceeded to make some further statements in explanation, when a member of the court objected.

The witness said he would much prefer not to be called upon to answer these questions. He had answered them hitherto, because he supposed the court desired him to do so, but he would prefer not to do so.

The accused stated that he had no objection to the full answers of the witness being placed on record.

The court was cleared.

After some time the court was reopened; whereupon the judge-advocate announced that the court determine that the answer of the witness to the last question remain upon record without the explanation, unless the witness desires to have it upon record.

The witness said:

I will add to my direct answer that I do not think it was the impression with the officers generally that General Pope, notwithstanding he was a talented officer, was fully up to the task of conducting so large a campaign.

Question. Do you, or not, believe that the impression in the army with regard to General Pope, of which you have spoken, had reference to any circumstances connected with his assignment to the command of the Army of Virginia and the questions of rank which that involved?

Answer. I do not think that had the slightest effect upon any general officer I met with, as General Pope ranked all in that army but General McClellan and myself.

Question. Was there not, among the officers of the Army of the Potomac, great indisposition to withdraw from the Peninsula, and do you not think that that indisposition went far to disincline those officers to co-operate heartily with General Pope?

Answer. I do not think that had anything to do with it. Two-thirds of the officers of the Army of the Potomac with whom I met on the James River were favorable to the withdrawal of the army, and three-fourths of the general officers with whom I met and talked were favorable to the withdrawal; and an informal council of war, where I was myself present, decided that it ought to be done, a majority of the general officers in the council being in favor of the withdrawal. I came down on a steamer from Harrison's Landing, and of all the officers I met there was not one single one who did not urge upon and argue with me the necessity of withdrawing the Army of the Potomac from the James River.

Question. After General Porter had reported for duty to General Pope, would you have considered it proper for you to have given General Porter an order as his superior officer?

Answer. No, sir.

Question. Did you think it improper to request him to give you information of the state of the army after he left you, and during the whole period that he gave it to you?

Answer. No, sir.

Question. From what you know now, have you any reason to believe that the information given by General Porter in these telegrams as to the actual state of the army under General Pope was not correct?

Answer. I am myself quite satisfied that it was correct. But that opinion is merely one based upon the information I then received and what I have since heard.

Question. Have you any knowledge of any extra exertions made by General Porter after orders were received to move to Aquia Creek?

Answer. Whilst I was with General McClellan at the pontoon bridge over the Chickahominy, where I had been sent by the Secretary of War or by General Halleck, a message came from General Porter to General McClellan, stating that he (General Porter) had ordered the wagons that were arriving at Williamsburg to pass on through, and had started his command, I think, in the direction of Newport News, with a view to facilitate matters, or get out of the way, or some such expression as that. General McClellan at the time was displeased at the movement, and said that it was not the intention for General Porter to move from there until General Franklin came up. The army was then in process of crossing. I remained there until just as the rear guard was going over, when, if I mistake not, General McClellan expressed to me his gratification at so much of the army being out of the way. It was either then or at some subsequent period that he expressed that to me. I afterward met General Porter at Old Point Comfort, where his troops were concentrating, and where he was placing them on board of the transports, and I said to him myself that I thought that it was very fortunate that he had moved that portion of the army as he had, because it would enable him to embark them that much sooner, and send the transports back for other troops.

Question. Do you recollect whether, on the day General Porter left your command at Aquia Creek, he was in your tent; and, if so, at what time he started, and whether he was not sick at the time he started?

Answer. If I mistake not, General Porter left there late in the evening, with the intention of joining the advance of his column that night. I am sure of one thing—that he had been sick for some two or three days before he started. What makes me remember this the more distinctly was, that many of his orders were written by him as he was lying on my bed in my tent. I am not certain about the time General Porter left, but my impression is that it was in the evening. I remember that he said he would be with his advance at a specified time, which was soon after he left me.

Question. You have spoken of the impression which you found a portion of the officers entertained of General Pope's capacity to carry on that campaign. Will you state whether, so far as you know, that impression was founded upon the character of the orders that he issued soon after taking command of the Army of Virginia?

Answer. I heard those orders very much ridiculed; but I do not think they had any special influence in the formation of the opinions of the officers who were acquainted with General Pope.

Question. You have spoken of your estimate of the condition of things in the Army of Virginia in connection with the campaign of July and August last. Had you any opportunities of forming that estimate other than those furnished through the dispatches received from General Porter?

Answer. Yes, sir.

Question. Will you state whether, to your knowledge, General Porter used any energy or dispatch in joining the command of General Pope, and in his military movements in that direction, beyond those which his duty as an officer required him to use?

Answer. No, sir.

The examination of this witness here closed.

Brig. Gen. DANIEL BUTTERFIELD called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. What was your rank in the Army of Virginia, commanded by General Pope?

Answer. Brigadier-general of volunteers and lieutenant-colonel of the Twelfth United States Infantry.

Question. Do you remember whether you were present on the evening of the 27th of August last at the headquarters of General Porter, when an order was received by him, through Captain DeKay, from General Pope?

Answer. I was present a few moments after it was received.

Question. Will you state what was said by General Porter in relation to that order, and what the order was?

Answer. The order, I believe, was for General Porter to move his forces at 1 o'clock in the morning to Bristoe Station. He handed the order to General Morell or to General Sykes, who were present, and said there was a chance for a short nap, or something of that sort (I do not remember the exact words), indicating that there was but little time for preparation. General Sykes or General Morell, I do not remember which (one or both of them), spoke with regard to the fatigue our troops had endured, the darkness of the night, and the fact that, in their judgment, the troops would be of more service to start at a later hour than they would be to start at the hour named. In reply to these remarks, General Porter spoke rather decidedly, that there was the order; it must be obeyed; that those who gave the order knew whether the necessities of the case would warrant the exertions that had to be made to comply with it. I do not state that as his exact words, but as the substance of what he said. Captain DeKay, who brought the order, was then present, and was asked some questions about the road. He stated that it was very dark, and that the road was full of teams. General Sykes, I think, suggested that it would be impossible for us to move at the hour named, if the road was full of teams; that they could not find the way. General Porter called two aides, and sent them off to investigate the condition of the road, and to ask General Pope to have the road cleared, so that we could move up. When we got outside, the darkness was so apparent (to use such an expression), and it seemed to be such a matter of impossibility to move, that General Porter said, "In consideration of all the circumstances, I will fix the hour at 3 o'clock instead of 1. You will be ready to move promptly." And I subsequently wrote an order, in General Porter's tent, for my command to be in line to march at 3 o'clock.

Question. Do you recollect whether, at the same time, Captain DeKay said anything about his having difficulty as a guide in showing the road?

Answer. I think he made some remark that it would be very difficult in getting back; that he would have hard work to find the way. I do not remember his exact language, but it was to that effect.

Question. Were your men very much fatigued by the march of the 27th, and how far had they marched?

Answer. They were very much fatigued. They had marched from Kelly's Ford to Bealeton, and from there up to Warrenton Junction, almost all the way without water, in the dust. It was very warm, and it was with great difficulty that we got them along.

Question. Did you march, or attempt to march, at 3 o'clock?

Answer. I did. I had my column formed, and staff officers sent out to notify me when the head of my column could take its place in the line. We marched from the camp up to the road, and there waited until we could take our place, which was at the rear of General Morell's division.

Question. At what time did you reach Bristoe Station with your command?

Answer. Toward noon; I do not remember the hour.

Question. How did you find the road?

Answer. I could tell but little about what was delaying the column ahead of me. I kept close up to the command in front of me. There were large quantities of wagons in the road and along the side of the road, and it required sharp watching to keep my brigade from being cut off by the wagons from the one ahead of me.

Question. Where were you on the 29th of August last?

Answer. My command were at Manassas Junction on the morning of the 29th. We marched from Bristoe Station up to Manassas Junction on the morning of the 29th, and from there we marched toward Gainesville, to the vicinity and a little beyond Bethlehem church.

Question. Were you there, or about there, on the afternoon of that day at 4.30 p. m.?

Answer. I was.

Question. Where were the enemy, in relation to your command, at that time?

Answer. In our front, and on our right.

Question. Do you mean to say that they were formed in battle on your front or right, as far as you could judge?

Answer. I had no means of judging what their formation was in our front. There were dense woods there, which our skirmishers were in, and which prevented my seeing whether they were formed or not. I judged, from the reports that I heard in the evening and subsequently, that they were.

Question. Did you leave that position on the morning of the 30th? If so, at what hour, and under whose orders?

Answer. I received an order about half-past 3 or 4 o'clock in the morning to move my command from that position. General Morell was with me at the time. The order was delivered to him, and I heard it. I immediately got my command in readiness, and I think I marched about daylight, or a little after daylight, from that position.

Question. Where did you march under that order?

Answer. I marched back past Bethlehem church, and from there turned off to the left, and came on to the battle-field of the day before.

Question. Was that the battle-field of the 30th?

Answer. It was.

Question. Did you see General Porter in that battle of the 30th?

Answer. I did.

Question. As far as you had an opportunity of judging, did he perform his whole duty on the field?

Answer. I think he did.

Question. How long at that time had you been under his command?

Answer. Since about the 1st of October, 1861.

Question. Continuously?

Answer. Yes, sir.

Question. Did you see in anything that he did, or in anything that he said, after he marched from Aquia Creek, or when it was understood that you were to come under the command of General Pope, any evidence of an indisposition upon his part to be faithful to General Pope and to his country?

Answer. I did not.

Question. Did you know General Philip Kearny?

Answer. I did, very well.

Question. Have you at any time had conversations with him in relation to General Porter as an officer?

Answer. Frequently.

Question. State what they were.

Answer. I had frequent conversations with General Kearny in regard to General Porter, as well as other officers.

Question. I speak of General Porter now.

Answer. I meant by that to say that the conversations were not particularly in reference to General Porter. He always spoke in the highest terms of General Porter, both as a brave officer and a gentleman, and as a hard worker.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. What do you know, if anything, about the forces having been impeded or brought to a halt in their march on the morning of the 28th of August last, at a little stream or creek not far from Warrenton Junction, in the direction of Bristoe Station?

Answer. I know that after it had got to be about daylight, I went out to the head of my column, and I found a difficult place to cross; that there was difficulty in getting the troops across. I could see that it had been dark, and the troops had been impeded, but they began to go on more rapidly as light broke. I did not know that that had been the original cause of delay in moving the column. I knew nothing further than I saw there.

Question. State the character of the difficulty—the character of the place; was it mud or water, or what was it?

Answer. It was mud and water both; one of those streams that we almost always have to force troops over. They would all stop, and go over one by one on a rail, if you would allow them to. In the day-time you could force them over very well; but at night, when it cannot be seen, it is a very difficult thing to get men across such a place.

Question. Did you see the order of the 27th from General Pope, or know anything about the urgency of its terms?

Answer. I did not read it.

Question. Did you learn of Capt. Drake DeKay that General Pope had taken measures to have the road cleared?

Answer. I did not.

Question. Can you state that, in point of fact, the road had not been cleared by General Pope's orders, or that at 1 o'clock at night and until later in the morning the road was all cleared; and can you state that the wagons that obstructed the road when you passed had not moved on to the road after daylight?

Answer. I cannot; I have no knowledge upon that subject.

Question. Had you on Friday, the 29th of August, any impression that the enemy in your immediate front was in any considerable force?

Answer. I had not when I first arrived on the ground. They subsequently made demonstrations that led me to believe that they had a force there.

Question. Do you, or not, believe that General Porter's force was sufficient to have pushed back and cleared the enemy from his immediate front?

Answer. That depends altogether upon what force the enemy had there, which I do not know.

Question. Were you present on the evening of the 29th of August,

when General Porter received a dispatch or order from General Pope, at or near Bethlehem church?

Answer. No, sir; I was not.

The examination of this witness was here closed.

Brig. Gen. JOHN BUFORD called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. What rank did you hold in the army commanded by General Pope during the last summer, in Virginia?

Answer. Brigadier-general of volunteers and chief of cavalry in the Second Corps.

Question. Do you recollect whether, on or about the 29th of August last, you made a report to General McDowell that a portion of Longstreet's command had left Gainesville, and were traveling along the Gainesville road?

Answer. Yes, sir; I did.

Question. What portion did you state were so marching?

Answer. Seventeen regiments of infantry, one battery of artillery, and about 500 cavalry.

Question. Did you see the force yourself?

Answer. I did.

Question. And you reported from your own observation?

Answer. Yes, sir.

Question. What did you suppose was the extent of their entire force, or the average size of their regiments, as they came under your view?

Answer. I thought the regiments would average about 800 men each.

Question. At what hour of the 29th of August did you make that report to General McDowell?

Answer. Between 9 and 10 o'clock in the morning.

Question. At what time did the enemy's force leave Gainesville?

Answer. I think it must have got clear of Gainesville by 9 o'clock; that is, the organized force. There were some stragglers following.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. From what direction did this force move?

Answer. They came from Thoroughfare Gap, I supposed. They took me in rear beyond Hay Market, toward Thoroughfare Gap, and came up the road on toward Centreville.

Question. Did that take them on toward Groveton?

Answer. They went up the pike from Gainesville toward Centreville.

Question. Did any part of the force come down the Gainesville road in the direction of Manassas Junction?

Answer. No, sir, A few of their skirmishers may have crossed the pike and gone in that direction for 200 or 300 yards, but not farther.

Question. Were the forces you saw in motion, or were they taking position at any time?

Answer. They were not taking position that I saw.

Question. Are you not satisfied that they proceeded down at once to the battle-field?

Answer. That is my impression, that they were going directly there, for there was firing very soon afterward; and later in the evening the cannonading was increased, and I supposed it was from the junction of these troops.

Question. From the position that you occupied, do you suppose they could have thrown a heavy force in the direction of the Gainesville and Manassas Junction road without your having observed it?

Answer. When I started from Gainesville, I started on the road to Bristoe, and acted as the rear guard of General Ricketts' command. That force that I saw passing through Gainesville might, after passing through Gainesville, have turned off to the right toward Manassas Junction without my knowing it.

Question. Is not 800 men a very large average number for a Southern regiment? Is it not possible that you have overestimated the strength of those regiments?

Answer. They were large regiments. I have thought over the subject, and at that time I made a particular estimate, and I thought they were the largest regiments I had ever seen in motion.

The examination of this witness was here closed.

The court thereupon adjourned to 11 a. m. on Friday next.

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WASHINGTON, D. C., *January* 2, 1863.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

Col. E. G. MARSHALL was then called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state what is your rank and position in the service?

Answer. Colonel of the Thirteenth New York Volunteers and captain in the regular service.

Question. Where were you on the afternoon of the 29th of August last?

Answer. I was on the road leading to Gainesville—the road from Manassas Junction.

Question. On what duty?

Answer. On duty with General Morell's division, in General Porter's corps, and commanding my regiment.

Question. Specify the character of the duty you were performing that afternoon.

Answer. About 1 o'clock I was detailed by General Porter to go with my regiment across an open country and a ravine to some timber that was facing our line of battle, and deploy skirmishers to find out the position of the enemy, and anything else that I could find out concerning them.

Question. State the position and force of the enemy in the immediate vicinity of General Porter's command, as far as you know it.

Answer. Immediately after going there, my skirmishers were fired on by a body of dragoons, and shortly afterward there was a section of artillery which opened fire upon General Porter's command. Soon after that, perhaps about 2 o'clock, the head of a large column came to my front. They deployed their skirmishers and met mine, and about 3 o'clock drove my skirmishers into the edge of the timber. We were all on the left of the Manassas Railroad, going toward Gainesville. This force continued to come down all day, in fact, until 1 o'clock at night. It was a very large force, and they were drawn up in line of battle as they came down. I reported at different intervals to General Morell, my immediate commander, the position of the enemy. But at one time I deemed it so important that I did not dare to trust orderlies or others with messages, and I went myself up to him, to confer concerning the enemy. This was about dusk. General Morell told me that he had just received orders from General Porter to attack the enemy—to commence the attack with four regiments. He seemed to be very much troubled concerning the order, and asked my advice, my opinion. I told him by all means not to attack; that it was certain destruction for us to do so; that I for one did not wish to go into that timber and attack the enemy. Their position was a very strong one, and they were certainly in force at that time twice as large as our own force—all of General Porter's corps. He had expressed to me the tenor of General Porter's order. I also deemed that we had executed the same with reference to the other part of the army—General Pope's army—by keeping this large body in force, and better than we would by attacking them, because, if we had attacked them, I felt that it was certain destruction, as we would have had to move our line of battle across this ravine into this timber, and then, perhaps, our line of retreat would have been entirely cut off from General Pope's army. I may say that this army that came down in our front was a separate and distinct army of the enemy from that which we saw General Pope's army fighting with. About the same time, before I went in to General Morell, I could hear and judge of the result of the fighting between the force of the enemy and General Pope's army. I could see General Pope's left and the enemy's right during the greater part of the day, about 2 miles off, perhaps more, diagonally to our front and to the right. The enemy set up their cheering, and appeared to be charging and driving us, so that not a man of my command but what was certain that General Pope's army was being driven from the field. In the different battles I have been, I have learned that there is no mistaking the enemy's yell when they are successful. It is different from that of our own men. Our own men give three successive cheers, and in concert, but theirs is a cheering without any reference to regularity of form—a continual yelling. Afterward, at dark, I was sent for by General Porter, and questioned very stringently with reference to the enemy; and my remarks to him were the same as I am now making, and as I made to General Morell. I also stated in conversation that I felt that our right was very weak, and that the pickets should be increased, for there was danger of our being cut off entirely from General Pope's army; and I was given one regiment under my command to go to the right of me, and four companies of another regiment to go on the left of me, as pickets; and General Griffin was also ordered to place a strong force on my right, and to connect with me.

Question. The position and force of the enemy being as it was between 5 o'clock and dusk, and the position and force of General Porter being as it was at that time, was it possible, without the greatest danger, for General Porter to have made a movement to his right, to attempt to reach and attack Jackson on his right?

Answer. No, sir; it was impossible to have done so. In the first place, it was impracticable to cross the country in that position during the day. Again, we would have been obliged to have whipped this very force in front of us, large as it was, to have got there, and it was very doubtful if we could have done it.

Question. They would have attacked you in flank if you had attempted that movement?

Answer. Yes, sir.

Question. Do you know that the order to attack, sent to General Morell from General Porter, was predicated upon the news which General Porter had received that the enemy was retiring?

Answer. General Morell told me that the news was that the enemy were retreating, and, says he, "We know to the reverse; that they are not."

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Did the force of which you speak seem to come from the direction of Thoroughfare Gap?

Answer. Yes, sir. Whilst the command was being got into line, prior to my going on this duty, my brigade was behind some others. General Porter had sent some dragoons of another regiment to the front, and my brigade was waiting in the road to get into position. I went to the left, and I could see a long line of dust; in fact, I saw two lines, one going along parallel to the mountains and the other one coming down through Gainesville, and it appeared to be close upon Gainesville at that time, perhaps this side of it; I cannot tell exactly, for I have never been to Gainesville; but the head of the column seemed to be about 5 miles off at that time.

Question. At what hour of the day was that?

Answer. It was 12 or half-past 12 o'clock. I joined my regiment and went on this duty at 1 o'clock. I should say the whole column of the enemy extended to Thoroughfare Gap. This column came down, and came rapidly to our front, as it appeared, along the Manassas Railroad. Their whole line seemed to be in the general direction of the railroad from Thoroughfare Gap down to our position. The other line of the enemy's left seemed to go to the left of the enemy's left that were fighting with General Pope. I was so close to the enemy that I could hear their officers give the command to wheel into line, and other commands that they gave, sometimes correcting their men.

Question. You spoke of another line of the enemy's forces that seemed to be proceeding in the direction of the battle-field. Did that line also appear to have come from the direction of Thoroughfare Gap?

Answer. They seemed to come through the same gap. The two lines joined together at a point just this side of the gap; where it was I do not know. It was a long distance off from our position. One line seemed to come directly down to the left of the enemy's extreme left, I should judge, and the other column came down to our front. There seemed to be two large armies.

Question. Did you make your estimate of the amount of that force principally from the extent of the line as indicated by the clouds of dust, or had you other means than that of judging?

Answer. My estimate was made mostly from the length of time in which they were coming down—there appeared to be artillery and infantry—and the time that we were attacked; and also what I had seen of the enemy's dust prior to going on this duty, and the length of their lines, as much as I could see of it, in our front.

Question. Would it have been possible to have distinguished the clouds of dust raised by artillery and infantry from those raised by wagon trains moving?

Answer. No, sir; you cannot tell the difference, except by the quickness of movement of these columns. They seemed to move very quickly, which caused me, before going on this duty, to judge that it was the enemy coming. I judged that the advance of the enemy was dragoons, from the fact that there was always a dust ahead of and disconnected from the main column, which moved quicker even than the rest of the line; and, therefore, before going on this duty, I judged that the enemy were coming down to our front.

Question. Would not an ambulance train move as quickly, or very nearly so, as would the artillery?

Answer. Yes, sir.

Question. If the enemy had been in as large force as you suppose, double the force of General Porter's corps, do you not think they would have made an attack on you on the evening of the 29th of August, or would have prevented your withdrawing from there on the morning of the 30th?

Answer. I do not think they would have made an attack on the 29th. Our position was a very good one, and, if they had attacked, they would have had to move their line over toward us. But I think that, on the morning of the 30th, if we had remained there, they would certainly have attacked us.

Question. You withdrew in their immediate presence, did you not?

Answer. Yes, sir; my opinion on the 29th, while I was on that duty, was, that they desired to remain on the defensive, and have us attack them, feeling confident of their position.

Question. At what hour on that evening did you first receive the impression that the battle was going against General Pope?

Answer. Between 4 and 5 o'clock.

Question. Do you think that you communicated to General Morell, as fully as you now state it, your impressions as to the strength of the enemy in your front?

Answer. I think that I did. My object in going in myself to confer with him was that he might get correct impressions; that a dispatch or a message by an orderly would not answer.

Examination by the judge-advocate here closed.

Examination by the COURT:

Question. How large a force of the enemy did you see on that day with your own eyes?

Answer. I cannot tell you. I could merely judge of their strength. It was a dense timber in which I was. We would get a view of the enemy first from one point through the timber and then from another. There was no place in which I could see their whole line. Their line of skirmishers was two regiments, at least, whereas mine was but one; and then, again, their troops appeared to be lying down behind this railroad.

Question. Was the line of the enemy extended over the road which General Porter would have used in reaching the right flank of Jackson's forces?

Answer. Provided General Porter had gone directly to General Pope's left, do you mean?

Question. Yes, sir; was that road open or free?

Answer. That road was blocked up by the enemy. There was no direct road to go over to General Pope's left, except by this road that the enemy already had.

Question. Did the enemy in your front make a junction with the enemy in General Pope's front, according to your understanding?

Answer. I do not think they did.

Question. What space do you suppose there was between the two parts of the enemy's forces?

Answer. They would naturally have made a connection with their dragoons; but their line of battle was not a continuous line. Their line of battle in front of General Porter's command was separate and distinct from their line of battle in front of General Pope's command.

Question. What was the space between their two lines of battle, should you think?

Answer. I should judge it to be at least 2 miles.

Question. From the position of the forces, both those of the enemy and our own, would the march of General Porter to reach the right flank of Jackson have been direct or circuitous?

Answer. It would have been circuitous, through a broken country. If he had endeavored to go the most direct route, it would have been through a broken country. But I do not conceive that it was practicable for him to have gone that route. I think that, in order to have acted upon the enemy, he would have had to go back the same route we took the next morning in retreating.

Question. Not practicable because of the character of the country, or the position of the enemy?

Answer. Because of the broken country; it was rocky, and then a part of it was very heavily timbered; and it would have been impracticable to have carried artillery through there, besides being fired upon and met by this enemy in our front.

Question. Did you go over that part of the country yourself?

Answer. I could see it; I did not go over it.

Question. What would have been the distance of the march if it had been made?

Answer. He would have had to have gone perhaps a half a mile or more out of the way by going a little around to the right.

Question. Was that route open, or was it obstructed, either by the nature of the country or by the enemy?

Answer. It was obstructed by the nature of the country. Whether it was or not by the enemy, I do not know. I was told that their dragoons had taken some prisoners at that point, which we would have had to cross over. That point looked to me during the whole day to be a very dangerous one, and that night I so expressed myself, and requested that a strong force should be put in that direction to watch our right.

Question. You have spoken of General Morell's division being drawn up in line of battle fronting the enemy. Will you please state, if you know, the relative position of the remainder of General Porter's corps to that force of General Morell, at the time they were drawn up in line of battle, and your command thrown forward as skirmishers?

Answer. I was informed that they were directly in rear of us when I went on that duty.

Question. Were they in line of battle?

Answer. I do not know. I did not see them. I do not know anything about that. I was informed that they were close behind us. We were in the advance.

Question. You have stated that General Porter's direct march toward Jackson's right was obstructed both by the character of the road and by the enemy.

Answer. His direct march by the most direct route was obstructed; that was held by the enemy.

Question. Was the circuitous route you have spoken of absolutely obstructed or not; was it a practicable route, in any sense?

Answer. I do not think it was a practicable route in any sense, by day or night. I do not think there was any route left for General Porter to have acted upon except by going back again on the road to Manassas, and then joining our army.

Question. What length of time would it have required to make that march, returning in the way you speak of?

Answer. I cannot tell you the length of time. It would have taken several hours, perhaps about half a day, to have marched and got into position again, so as to have had any effect.

Question. Was that the road taken by you on the 30th?

Answer. Yes, sir.

Question. Did it take a half a day then?

Answer. I do not know how long it did take us. There was a data which I do not recollect. I would like to say here that I had been out on picket with my command from 1 o'clock on the afternoon of the 29th all that night, until the next morning. We had had nothing to eat until the next morning, and then I could get only a little hard bread, which I made my men carry on their shoulders until we could stop on the march somewhere for them to eat it. I did not feel like making any observations, but went right to the battle-field and into the fight.

Question. Of the line of battle formed by the enemy opposed to General Porter's command between 5 o'clock and sundown, what portion of the enemy's troops were south of the Manassas Railroad?

Answer. They were more along the railroad. The railroad came down close to us—off a little to the right of my skirmishers; so that, in advancing my skirmishers, my right came on to the railroad much sooner than my left.

Question. Were any of the enemy's forces south of that road?

Answer. They were along the railroad, but none this side of it except skirmishers. I met dragoons along the whole front, and particularly on this direct road; and then afterward their skirmisher came to my front, and extended in a longer line than I did, and drove me in.

Question. Supposing the force of General Porter to have been extended from the point where General Morell's command was, down to Bethlehem church, could not a large portion of them have moved along the Sudley Springs road to the battle-field within a much shorter period of time than you have named for the whole movement?

Answer. By all means, much sooner than we would.

Question. Do you know any reason why that road was not practicable for an advance on the 29th?

Answer. I do not know any reason why it was not practicable.

Question. Would such a separation of General Porter's corps on the 29th, by a part of it moving up the Sudley Springs road to the battle-field, have been an eminently dangerous military movement at that time, considering the position and force of the enemy in front?

Answer. It would be unusual to separate parts of a corps, and particularly with such a large force of the enemy in our front. It would have left us very weak in our position in the advance. I understood that the part of the corps that was left behind by General Porter was left there as a support to us, to be used in any direction that he saw fit. It would have been unusual, and I think it would have been criticized by General Porter's officers, to have sent them off in any other direction, leaving us alone with this large force of the enemy in our front.

Question. Suppose the case of an order from General Pope to General Porter to make the movement to assault the right of Jackson's army, could that Sudley Springs road have been taken by any portion of General Porter's corps to accomplish that object?

Answer. Yes, sir; it could have been taken; but it could not have been taken, when we got the order, in time to have met the enemy and done anything.

Question. You mean done anything by daylight?

Answer. Yes, sir; by daylight that day—to have done anything that day.

Question. Did the battle cease immediately after daylight?

Answer. Yes, sir; the battle ceased about dark.

The examination of this witness here closed.

Maj. Gen. GEORGE B. MCCLELLAN called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state whether you commanded the Army of the Potomac in its Peninsula campaign in Virginia, and up to what time after that?

Answer. I commanded the Army of the Potomac from immediately after the battle of Bull Run, in 1861, to about the end of August, 1862; I have forgotten the exact date.

Question. Did General Fitz John Porter command a corps in that army; and, if so, at what time, and for what period?

Answer. He served in that army from some time in the month of September, 1861, first as commander of a division, and then as a commander of a corps, from about the end of April or the beginning of May, 1862.

Question. When did the Army of the Potomac reach Aquia Creek?

Answer. It reached there, by detachments, during the latter part of August.

Question. Have you any knowledge of any efforts made by General Porter for the purpose of removing his own command, in order to get to Aquia Creek and join General Pope?

Answer. I have.

Question. State them, if you please.

Answer. Immediately after the commencement of the movement for the evacuation of Harrison's Bar, General Porter was instructed to move his corps to the vicinity of Williamsburg, holding a position in front of it, to be able to support either wing of the army, if attacked. While there, he received information, through contrabands and intercepted letters, showing that the rebel troops in the vicinity of Richmond were moving upon General Pope. Immediately, without waiting for further orders from me, he moved his command with the utmost rapidity to Newport News, to embark it. And, while at Newport News, he used every effort to facilitate the embarkation of his command for Aquia Creek.

Question. Did he know that the object of that movement upon his part was to get as quickly as possible to the assistance of General Pope?

Answer. Yes.

Question. At what time did he get off from Newport News?

Answer. I think he embarked in person on the 20th of August; I could not tell exactly without referring back to papers and dates.

Question. Will you look at that paper [handing witness a paper], and say whether you recognize it?

Answer. Yes.

Question. Does that paper refresh your recollection?

Answer. It confirms my recollection that it was on the 20th of August, in the evening, that he sailed, to the best of my knowledge and belief.

The paper was then read, as follows:

ASSISTANT QUARTERMASTER'S OFFICE,
Fort Monroe, Va., August 20, 1862—11 a. m.

Maj. Gen. F. J. PORTER,
Commanding Fifth Corps, Newport News:

Please push off your troops without one moment's delay. The necessity is very pressing—a matter of life and death. What progress is made, and when will you be through? See me before you sail.

GEO. B. McCLELLAN,
Major-General.

Question. Was that order executed by him to your satisfaction?

Answer. Entirely.

Question. You have stated, if I understood you, that the first movement which General Porter made for the purpose of getting to Newport News was without orders from you. Was it not contrary to orders at that time?

Answer. It was departing from the letter of the instructions I had given. I should say, in explanation of that, that General Porter sent me a telegram, one, or perhaps two, stating that he would go by a certain hour if I did not forbid it. By some delay of the telegraph line, I did not receive those dispatches until after he had started; but I fully approved his course in doing as he did.

Question. Was the effect of that movement to expedite his arrival at Aquia Creek?

Answer. Very decidedly; at least one day, if not more.

Question. After he left Newport News with his command, where did you first see him?

Answer. At Aquia Creek.

Question. How long was he there at Aquia Creek, under your immediate supervision?

Answer. I think from twenty-four to thirty-six hours, between there and Falmouth.

Question. Did you see him after he left Falmouth until the campaign was at an end?

Answer. No; I did not.

Question. From what you saw of his conduct, or from anything that you may have heard from him, after he knew that he was to go to the assistance of General Pope, did he, in your opinion, do all that an energetic, and zealous, and patriotic officer could have done?

Answer. I think he did.

Question. Had you any reason, at any time, after he received notice that he was to go to the assistance of General Pope, to believe that he would fail General Pope, or the country, in the discharge of his duty?

Answer. None whatever.

Question. Do you remember whether you received from General Burnside, after General Porter joined the command, or was about to join the command, of General Pope, any dispatches that he (General Burnside) had received from General Porter?

Answer. I received several—the exact number I do not know—perhaps three or four, forwarded by General Burnside from Falmouth.

Question. To yourself?

Answer. The copies were addressed, I think, both to General Halleck and myself.

Question. Did you, from the telegrams that you so received, form the impression that General Porter would not be true to his duty to General Pope?

Answer. I did not.

Question. Will you look at that paper [handing witness paper already in evidence, purporting to be a telegram from witness to General Porter, dated "War Department, September 1, 1862, 5.30 p. m."], and say if you recognize it, and if you sent that dispatch to General Porter?

Answer. I recognize the dispatch as one I sent to General Porter. There are one or two verbal errors in this copy, but they are unimportant.

Question. As you have stated that you never doubted that General Porter would be true to his duty to General Pope, how came you to send General Porter such a dispatch as that?

Answer. I sent it in accordance with the request of the President of the United States, who sent for me on that day, and told me that he had understood that there was an unkind feeling on the part of the Army of the Potomac toward General Pope, and requested me to use my personal influence to correct it by telegraphing either to General Porter or to any other of my friends there. I told him that I did not consider it necessary, but was perfectly willing to do it. I had no doubt, then, in my own mind, but that the Army of the Potomac, and all connected with it, would do their duty without there being any necessity for any action on my part.

Question. I understand you to say, then, that you sent the telegram to quiet the apprehensions of the President, and not to remove any apprehensions of your own?

Answer. Entirely so.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. This dispatch to General Porter, of which you have spoken, bears date 5.30 p. m. of the 1st of September, 1862. Were you not then, and for some time afterward, in command of the defenses of Washington?

Answer. I had been placed in command of the defenses of Washington by a verbal order that morning.

Question. Can you recall the hour at which, on the following day, the order was sent to General Pope to fall back within the defenses of Washington?

Answer. The order did not emanate from me; but my recollection is that it was sent at a very early hour in the morning of Tuesday, the 2d of September.

Question. Did, or did not, the execution of that order necessarily place the forces of General Pope, and General Pope himself, under your command?

Answer. I was directed not to assume any command over the active troops commanded by General Pope until they reached the immediate vicinity of the defenses of Washington; I was expressly excluded from any control over them until then.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. At what time did General Porter receive orders to join General Pope's command?

Answer. I cannot give the exact date. The order came direct from General Halleck, and had been received by General Porter when I reached Aquia Creek.

Question. When the accused was making his efforts to leave the Peninsula, did he know that he was to be placed under the immediate command of General Pope?

Answer. No; it was only known that the Army of the Potomac was to move to Aquia, to re-enforce and assist the Army of Virginia. The question of command had not then been decided, so far as I know.

The examination of this witness here closed.

JOHN TUCKER called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Are you now, and were you during the last two weeks of August, 1862, Assistant Secretary of War?

Answer. I am, and was.

Question. During that period, did you see the accused (General Porter) at Old Point Comfort?

Answer. I did.

Question. Was he then, with his command, on his way to Aquia Creek?

Answer. He was.

Question. With a view to support and co-operate with the Army of Virginia, under General Pope?

Answer. I understood those to be his orders.

Question. Did you see and judge of his conduct in respect of zeal and activity and energy to accomplish that object?

Answer. I did.

Question. What opinion did you form of it?

Answer. I formed the opinion that he was most zealous and energetic in getting his troops on board of the various transports.

Question. Did he repeatedly ask your own co-operation with him in order to give more effect and authority to his own directions?

Answer. He did.

Question. Did you see anything in his whole conduct, or hear anything in his language, giving any indication whatever that he would fail to do his whole duty in co-operating with and supporting General Pope against the enemy?

Answer. I did not.

Question. Did you, when you returned to Washington, make, in general terms, a report to the Secretary of War touching these things of which you have spoken?

Answer. I did, verbally.

Question. And in the same sense in which you have testified here?

Answer. Yes, sir.

The examination by the accused here closed.

Examination by the COURT:

Question. When the accused was making his efforts to leave the Peninsula, did he know that he was to be placed under the immediate command of General Pope?

Answer. I cannot answer that question; I do not know that he did.

The examination of this witness here closed.

Lieut. GEORGE T. INGHAM called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. What position do you hold in the army?

Answer. Aide-de-camp to General Sykes.

Question. To what regiment do you belong?

Answer. The Eleventh United States Infantry.

Question. Were you present with General Porter on the evening of the 29th of August last?

Answer. Yes, sir.

Question. Did you see a messenger arrive, bearing a message from General Pope to General Porter?

Answer. I did.

Question. Would you recognize that messenger now should you see him?

Answer. Yes, sir; I think I should. [The witness indicated Capt. Douglass Pope, who was present, as the person who bore the message referred to.]

Question. About what time in the evening did he arrive?

Answer. It was after sunset.

Question. And about what time did he leave?

Answer. I do not think that he remained there more than twenty or twenty-five minutes, at the outside.

Question. Do you know what direction he took when returning?

Answer. It was a road which crosses the railroad, and comes out to the road that we came in from the junction, going out on the Gainesville road; I believe it forms a junction there with the Gainesville road, and bears off toward Bull Run. It was the road we took the next morning to go to Bull Run.

Question. Did you go after him a second time and bring him back?

Answer. I did; started him back.

Question. At what hour, or about what time, did he return?

Answer. I suppose he returned immediately, because I told him he would find General Porter in precisely the same position that he had been in before.

Question. How was it with reference to the darkness of the evening?

Answer. I rode on pretty rapidly, and I found Captain Pope had got between a quarter and a half a mile beyond. There were quite a number of officers on the road, and I had to ride up close to Captain Pope to see who he was, it was so dark at that time.

Question. Did you see him when he arrived the first time?

Answer. I did.

Question. Do you know by which road he came?

Answer. I do not.

Question. Did he start to go back on the Sudley Springs road, the road that he finally took?

Answer. No, sir; he was bearing off down the railroad, toward Manassas Junction.

Question. Who changed him from that direction?

Answer. I told him to take the left-hand road, and then Mr. Weld went down to the road with him, to show him which road to take. I was starting to go myself.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. You say that Captain Pope arrived after sunset. How much after?

Answer. I cannot tell you exactly the time. I know that it was after sunset, because he was there only the short time I have mentioned, and when I went after him to bring him back it was quite dusk, and I had to go up close to him in order to recognize him.

Question. How far did you follow him before he was overtaken?

Answer. I followed him between a quarter and a half a mile; not more than a half a mile and not less than a quarter.

Question. Did you find him moving on the road, or stopping at a well where there was water?

Answer. He was moving on the road. He had got past the house where the well was.

Question. For what purpose were you sent to call him back?

Answer. I was sent to call him back. General Porter gave me a message for him which I have entirely forgotten. It has escaped my memory, because, after he gave it to me, General Porter said, "Never mind; just tell him to come back to me," and I did not charge my memory with it.

Question. Do you think if you were to hear it now you would recall it? Was it to the effect that intelligence had been received that the enemy was falling back through Thoroughfare Gap, or some other point?

Answer. I should not like to swear that it was that, because I do not recollect what it was.

The examination of this witness was here closed.

The accused then said: I desire to renew now the offer to the court of certain telegrams which have been excluded by the court when offered as declarations by me. I have now, as I trust, shown to the court that those telegrams are my official acts, done continuously in the performance of my duty, under directions so to do. I hope that in the quality and character of official acts, of which the Government has already spread two or three upon the record, the court will decide to receive the whole body of the dispatches which I offered in the opening of my defense. I understand that the court then decided not to receive them as declarations. But I think they have assumed a new character under the proof I have offered, and I therefore again submit them.

The judge-advocate said: I think the character in which these dispatches were presented the other day has certainly been changed by the testimony submitted by the accused. General Burnside has stated here that he regarded these dispatches as official papers. As such, it seems to me but proper that they should be received. I therefore withdraw my objection to them.

The papers referred to were accordingly received, and ordered by the court to be placed on file.

The court thereupon adjourned to 11 a. m. to-morrow.

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WASHINGTON, D. C., *January* 3, 1863.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

Lieut. JAMES STEVENSON was then called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. State the regiment to which you belong, and the rank that you hold in it.

Answer. I am a second lieutenant of the Thirteenth New York Volunteers.

Question. Is that Colonel Marshall's regiment?

Answer. Yes, sir.

Question. Did you, on the 29th of August last, proceed from the left flank of General Pope's army to the position then occupied by your regiment?

Answer. Yes, sir.

Question. In doing so, about what distance did you pass over?

Answer. Between a mile and a mile and three-quarters.

Question. Did you go in as direct a line as possible?

Answer. Yes, sir.

Question. Did you travel on a road or across the country?

Answer. Across the country.

Question. Were you on horseback?

Answer. Yes, sir.

Question. How long did it take you to make that journey?

Answer. About an hour.

Question. About what time in the day was it when you arrived?

Answer. I could not state what time I arrived. It was between 1 and 4 o'clock in the afternoon.

Question. Was there any road near the route you took?

Answer. No, sir.

Question. State the character of the country over which you passed.

Answer. It was rather a rough country; partly wooded, with a number of small ravines.

Question. Did you have occasion to dismount once or twice?

Answer. I believe I did, once or twice.

Question. Was it a country through which troops—infantry and artillery—could be marched in large masses?

Answer. No, sir.

Question. When you arrived at the location of your regiment, could you see the enemy?

Answer. Yes, sir.

Question. What was the impression you then formed as to his force?

Answer. I judged him to be about between 12,000 and 15,000.

Question. Did you see his forces of different arms—infantry and artillery?

Answer. Yes, sir.

Question. Did you see anything to make you think he was receiving re-enforcements?

Answer. Yes, sir.

Question. What?

Answer. I could see dust rising in the rear of his front, which seemed as though they were moving toward the front.

Question. If General Porter had attempted to proceed directly to attack the right of the enemy, who were then, or soon after, engaged with General Pope, must he have passed through the country through which you passed?

Answer. Yes, sir.

Question. And would that movement have directly exposed General Porter's own left flank to the assault of the enemy in front of him?

Answer. Yes, sir.

Question. Do you know the road which General Porter's command took the next morning to reach the battle-field?

Answer. Yes, sir.

Question. Was there any other road more direct than that by which General Porter's command could have reached the right of the enemy?

Answer. I believe not.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. How long have you been in the military service?

Answer. Nearly two years; within three months of two years.

Question. What experience have you had in active field operations?

Answer. Such as the regiment has been in.

Question. Have you been in any battle?

Answer. In the battle of Fredericksburg.

Question. The recent battle there?

Answer. Yes, sir; and I was with the regiment during the seven days' battle before Richmond.

Question. You have not had a military education?

Answer. No, sir.

Question. For what purpose were you leaving the left wing of General Pope's army on the occasion you refer to?

Answer. For no special purpose.

Question. Were you the bearer of a message?

Answer. No, sir; I was then carrying the mail for our brigade. I always carried the papers to and from the brigade. I was then off to see whether I could send our mail away.

Question. What troops were on General Pope's left flank when you left?

Answer. I could not state what troops they were, more than they were General Pope's troops.

Question. Did you encounter any enemy in the route you passed over from General Pope's left to Colonel Marshall's regiment?

Answer. No, sir.

Question. How much of the ground over which you passed would General Porter's forces have necessarily occupied or crossed in making an attack on the right wing of the enemy?

Answer. About a third or a half of it.

Question. You think the distance between Colonel Marshall's regiment of skirmishers and the left flank of General Pope was not to exceed a mile and three-quarters?

Answer. No, sir; not more than that.

Question. You state that the enemy's force in front of General Porter's command on the 29th of August was from 12,000 to 15,000 strong. Did you see that number of the enemy, or upon what grounds did you estimate their force to amount to that number?

Answer. I judged from demonstrations and what I could see.

Question. What demonstrations?

Answer. I saw a great many troops; I probably did not see that number.

Question. Did you see them in regiments?

Answer. I saw them in regiments.

Question. How many regiments?

Answer. I could not state how many.

Question. Did you, or not, mainly rest your estimate of the number upon the clouds of dust that you saw?

Answer. No, sir; not altogether.

Question. I do not say altogether, but mainly.

Answer. No, sir.

Question. Was, or was not, that the principal indication to you of the amount of the enemy's force?

Answer. No, sir.

Question. Did you, on your arrival, report to anybody the amount of force that you supposed you had observed?

Answer. No, sir.

Question. Were those forces of the enemy, of which you have spoken, in motion?

Answer. No, sir; they were not in motion, going to and fro.

Question. Were they in what is called position?

Answer. Yes, sir.

Question. At what distance were they from Colonel Marshall's skirmishers?

Answer. About a half a mile from the skirmishers.

Question. You had no other view of them than that which you could catch at that distance, and in the broken country?

Answer. No, sir.

Question. Did you at that time speak to anybody of the number of the enemy's force which you supposed to be present, or has that estimate been formed by you since?

Answer. I do not remember of speaking to any one. I may have done so.

Question. You came from General Pope's left to the regiment of skirmishers of which you have spoken. You did not proceed from that regiment to the remainder of General Porter's command, did you?

Answer. Yes, sir.

Question. In what position did you find his forces?

Answer. I could not say. The main portion of them, at least the front, was stationed right on a hill to the rear of the battery, and some on the road.

Question. What distance do you think it was between the force of the enemy which you have described and the forces of General Porter?

Answer. I think it was a mile—about a mile.

Question. What was the character of the country between those forces? I mean the Confederate forces, as you saw them placed, and the forces of General Porter as you found them.

Answer. It was an open country. They were on an elevated position, and so were we, with it somewhat lower in the center.

Question. Was some portion of the country cleared land?

Answer. Yes, sir.

Question. And some woods?

Answer. Some woods.

Question. The ground was not remarkable for its ruggedness, was it?

Answer. No, sir.

Question. What do you suppose to have been the length of the enemy's lines that you observed, and which induced you to estimate their forces at from 12,000 to 15,000?

Answer. I should judge about a mile.

Question. You state that you think General Porter could not have made an attack on the enemy's right flank without exposing his own left flank to an attack from the enemy. Do I understand you correctly as expressing that opinion?

Answer. Yes, sir.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. You are understood to have testified that General Porter's corps, in order to reach the right of the enemy, would necessarily have had to pass over the route you passed over coming from General Pope's left to your regiment. Did you pass over the route which General Porter's force would have had to take to reach the enemy's right?

Answer. I passed over a part of it, I believe.

Question. Will you state on which side of the Manassas Railroad, north or south, this line of battle of the enemy was drawn up?

Answer. On the north side.

Question. On which side of the railroad was General Porter's corps?

Answer. On the same side, I think.

Question. Was not the enemy on both sides of the railroad, and along the railroad?

Answer. Yes, sir.

Question. Where were the batteries in reference to the position of the corps?

Answer. On the right.

Question. On the right of the railroad, as we faced the enemy?

Answer. Yes, sir.

The examination of this witness here closed.

The accused submitted in evidence, without objection, the following papers:

The consolidated morning report of General Piatt's command on September 5, 1862, showing the aggregate effective strength of that command then to be 1,569 men.

A telegraphic dispatch from General Porter to General McClellan, the dispatch itself being without date, but certified by General McClellan to have been received on September 1, 1862.

A letter from General Porter to General McClellan, dated Centreville, August 30, 1862, and certified by General McClellan to have been received by him on the morning of the 1st of September, 1862.

A dispatch from General Pope to General Halleck, written in cipher, dated "Headquarters, field of battle, near Groveton, August 30, 1862, 5 a. m.," giving an account of the battle of the preceding day, August 30 [*sic*].

There being no witnesses present on the part of the accused, the judge-advocate stated that he proposed to call the orderly who accompanied Capt. Douglass Pope when he bore the order of 4.30 p. m., August 29, 1862, from General Pope to General Porter, to rebut the testimony introduced by the accused, in reference to the time that order was delivered to General Porter.

The accused objected to the calling of the witness, on the ground that his testimony was not rebutting, but merely corroborative of the testimony offered by the prosecution in the opening of this case.

The court was thereupon cleared.

The court after some time was reopened.

The decision of the court, as announced, was that the witness should be examined for the satisfaction of the court.

The judge-advocate said that he would not call any witnesses until the testimony for the defense had been concluded.

The court thereupon adjourned to 11 a. m. on Monday next.

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WASHINGTON, D. C., *January* 5, 1863.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

Lieut. Col. JOSEPH P. BRINTON was then called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Are you the lieutenant-colonel of the Second Pennsylvania Cavalry?

Answer. I am.

Question. Belonging, on the 27th of August last, to the army of General Pope?

Answer. Yes, sir.

Question. Where were you located on the evening, or the beginning of the evening, of the 27th of August last?

Answer. At Catlett's Station.

Question. Did you go from Catlett's Station to Warrenton Junction on that evening?

Answer. Yes, sir; I did.

Question. At what time?

Answer. I left Catlett's Station, I think, at or near 10 o'clock at night.

Question. Proceeding directly to Warrenton Junction?

Answer. Proceeding rather indirectly to Warrenton Junction. I went for the purpose of seeing General Porter. I did not know exactly where to find him, and my search occupied about two hours. I found him about 12 o'clock at night, I think.

Question. What was the character of the night?

Answer. The night was very dark and overcast—very cloudy.

Question. Could you see the road well?

Answer. No, sir; it was difficult to distinguish the road, or any objects on it.

Question. Were you alone?

Answer. No, sir; there were two officers with me.

Question. Did the darkness materially impede you in your efforts to find your way to General Porter?

Answer. It did.

Question. And delay you?

Answer. Yes, sir.

Question. Did you see any wagons on the road over which you traveled?

Answer. Yes, sir; the road from Catlett's Station for a half a mile westward was blocked up with wagons. We ran into them constantly. The road is there a narrow one, leading through a wood, and it was difficult for us to get along on that account. We ran into a tree on the one hand or a wagon on the other, without being able to distinguish until we were upon it.

Question. About what distance do you think you rode in finding your way from Catlett's Station to Warrenton Junction?

Answer. Probably 5 miles; 4 or 5 miles.

Question. Did you frequently see wagons in the road with their horses unhitched and their teamsters absent?

Answer. On my return, I noticed that horses were hitched to the wagons. I did not observe it particularly as we were going to General Porter's.

Question. When you reached General Porter, did you speak to him of the condition in which you had found the road?

Answer. Yes, sir, I did, in answer to his inquiry concerning the state of the road.

Question. Did he then make of you any request in relation to the road?

Answer. Yes, sir; he requested me to try to have the road cleared, stating his intention to pass along with his corps.

Question. Did you do anything to comply with that request?

Answer. Upon my return, I told the adjutant to send out some men to get these wagons out of the way.

Question. Do you know what success that party met with in that attempt?

Answer. I do not.

Question. Do you know whether those wagons were still in the road at daybreak?

Answer. I do not.

Question. State what was the condition of the railroad bridge over Cedar Creek, with reference to passing over it at night.

Answer. The railroad bridge over Cedar Creek is one which, I think, it would be difficult to pass a party of infantry over at night; almost impossible, certainly, without danger. I passed over it, I think, two days before, and led my horse across it, but that was in the day-time. Even then it was a difficult matter. Infantry could pass over it well in the day-time, but the planks were thrown loosely on, and they would be likely to fall through at night. As I was leading my horse across, I saw one fall through that was being led over.

Question. It was at Warrenton Junction that you found General Porter?

Answer. It was near Warrenton Junction; I suppose three-quarters of a mile from Warrenton Junction; a half a mile or three-quarters southeast of the Junction, I should judge.

Question. What was the object of your visit to General Porter that night?

Answer. A report had been brought in by scouts of our regiment that General Longstreet, with his regiment, would probably cross the run near Weaversville, south of Catlett's. Knowing but little, or being almost entirely uninformed of the position of the rebel army, I went to inquire whether it was possible for him to be there, and to inform General Porter of it, as he commanded the largest body of troops in the neighborhood.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. You speak of the difficulty of crossing the railroad bridge over Cedar Creek. Was not that creek fordable?

Answer. Yes, sir. I believe there was a ford a few hundred yards above the bridge. I do not know but what it was fordable at almost any point.

Question. You speak of the difficulties you encountered in your ride that night, which delayed your arrival at Warrenton Junction. What was the character of those difficulties? Did you, in point of fact, lose your way, or did you simply ride slowly on account of the darkness?

Answer. The difficulty arose from not knowing exactly where to find General Porter. Wherever I saw an encampment or lights, I went and inquired. There were a large number of wagon trains on the other side of the stream. I went up to several wagon trains, and asked them if they knew where General Porter's headquarters were.

Question. And the delay resulted in that way?

Answer. Yes, sir; from the difficulty of finding General Porter's headquarters, not knowing exactly where they were located.

Question. At what hour did you return to Catlett's Station?

Answer. I think I occupied about an hour in returning. I think it was about 1 o'clock when I returned.

Question. When returning, having no occasion to look for General Porter, or anything to interrupt your progress, did you, or not, proceed directly to Catlett's Station, without encountering any obstacle growing out of the darkness of the night?

Answer. No, sir. I stopped several times at the wagon trains that lay in the road between the ford of Cedar Run and our encampment at Catlett's Station. I had been told that our regimental train was one of those lying in the road, and I wanted to find it; and in stopping there, inquiring of the wagons, I experienced great difficulty in finding it. In one train the horses were unhitched from the wagons, and were standing at the wheels or at the tongues of the wagons, where they were fed, I suppose; and, in many instances, no wagoner could be found. It was my desire to find our own regimental train, which caused some delay.

Question. The point of the question is, whether your delay in returning was at all occasioned by the darkness.

Answer. It was, indirectly, occasioned by that, inasmuch as I could readily have found our wagon train if the night had not been dark.

Question. I wish to know, supposing you had passed over that road in the day-time—say the evening previous—and had been directed to return directly from Warrenton Junction that night, without having occasion to stop and make inquiries of any kind, whether the darkness

was of such a character as would have delayed you in making that journey?

Answer. In answer to that, I would say that I now recall the fact that before coming to the wagon trains we lost our way.

Question. My question is based upon the supposition that you had passed over the road the evening before, and had had the acquaintance with the road which that would have given you.

Answer. It is impossible for me to answer that question. I know that, in consequence of the darkness of the night, we did lose our way. How it would have been if we had more thoroughly known the road, I cannot say.

Question. Had you ever passed over that road by daylight?

Answer. No, sir; not the portion of it from General Porter's headquarters that night to the railroad. The other portion of it I know.

Question. You had not before passed over that portion of it where you lost your way that night?

Answer. No, sir; I did not go that way. I returned by a different route from the one which I went. I went directly from the ford at Cedar Run, or as nearly so as I could, in a direct line to the junction of the railway. General Porter's headquarters were situated a distance from that point, in a wood. In coming back, I tried to follow a direct road leading back to the ford, without going to the railway junction.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. In the wooded part of that road, how far from you could you see wagons standing still?

Answer. I do not think I could have distinguished a wagon 5 yards off.

Question. How far could you have seen one in the open plain?

Answer. It was so very dark that I do not think that would have made any difference.

Question. With the night as it was, and with the wagons as they were, between 12 and 1 o'clock, would the movement along that road of troops in large masses have been practicable? I mean, of course, an orderly movement.

Answer. I do not know as I should answer that question. The court are more able to draw an inference than I am. I give simply the facts. I can give my judgment if it is desired. I should think it would have been very difficult to move a body either of infantry or of cavalry over that road at night—almost impossible. They might have been marched in file, following each other in that way.

Question. How as to artillery?

Answer. Artillery could not have been moved without moving the wagons.

The examination of this witness was here closed.

The accused then stated that he was ready to present the telegrams, &c., from himself to General Burnside, together with other papers, which the court on Friday last agreed to receive. Copies of them were in the War Department, and it was not, perhaps, necessary to call witnesses to certify to the correctness of the copies now presented.

The judge-advocate said that he had not had the papers in his possession, or he would have verified them by comparison with those in the War Department. It might be that the copies now presented were correct copies; no doubt they were; but, in a case so important as this, he did not wish to take the responsibility of receiving any papers unless they bore some legal ear-marks of authenticity.

The court was thereupon cleared.

After some time the court was reopened, and the judge-advocate announced that the court had determined to receive such of the papers presented by the accused as appeared to be sufficiently authenticated.

Sundry papers were then presented, received, read, and ordered to be placed on file, marked, "Accused, Exhibit A, B, C, D, E, F, G, H, I, K, L, M, and N."

The accused here rested his case.

CHARLES DUFFEE was then called by the court, and sworn and examined as follows:

By the COURT:

Question. Will you state your position in the military service in August last, in connection with the campaign of the Army of Virginia, under General Pope?

Answer. I was detailed from the First Ohio Cavalry as a private orderly for Captain Pope.

Question. Are you in the service now?

Answer. I am not.

Question. Have you any recollection of having accompanied Captain Pope as his orderly on the 29th of August last, on the occasion of his bearing an order from General Pope to General Porter?

Answer. I have.

Question. Will you state all the circumstances connected with the transmission of that order?

Answer. General Pope gave Captain Pope the order to carry to General Porter, and was telling him where he would find General Porter, when I spoke up, and told him that I knew the road myself; that I had traveled over it before. Thereupon he was satisfied for us to start with the order, which we did.

Question. What was the hour at which you left?

Answer. We started, as near as I can recollect, about half-past 4 o'clock, and went on at a pretty good gait until we came to General Porter's headquarters. Sometimes we were on a trot, sometimes on a walk, and sometimes on a canter, going about as fast as we thought our horses could travel.

Question. State what happened on the way.

Answer. We came across General McDowell, whom we expected to find at a certain place, and did find there. He told us exactly where we could find General Porter, and offered to send a guide with us. I said it was not necessary, as I knew the road myself. We went on until we came out on the Hay Market road, and there we found General Porter. Captain Pope delivered the order to him, and staid and talked some considerable length of time with him, I should judge from twenty minutes to half an hour, before we started to return. I should think, to the best of my judgment, that we occupied about an hour in going from General Pope's headquarters to where we found General Porter, which would make the hour of delivery about half-past 5 o'clock.

Question. Will you state what General McDowell said? Did he see the order or not?

Answer. He saw the order, and said that it was an important order.

Question. Could you tell at about what place on the road you met General McDowell?

Answer. We met General McDowell, I should think, not over 2 miles from General Pope's headquarters; not quite half way from there to General Porter's headquarters.

Question. Did you return with Captain Pope?

Answer. Yes, sir.

Question. Was Captain Pope overtaken on his return, and requested to go back to General Porter?

Answer. He was met, as I understood, by another message, and went back with that.

Question. Where were you in the mean time?

Answer. At the time we were met by the other message, as I understood it, I had asked leave of Captain Pope to stop and get a drink of water at a well, and he sent an orderly to let me know that he was going back again, and I joined Captain Pope close to where the well was, and went back.

Question. Have you any recollection of the appearance of the sun? Can you recall the hour by that? Or have you any impression as to the hour except that derived from the time that you supposed you occupied in riding from General Pope to General Porter?

Answer. I do not think I particularly noticed the sun. I noticed the time more particularly when we started, in connection with the distance we had to go, and I said we would have to go in a hurry, or we would be in the night in getting back.

Question. When did you start back from General Porter?

Answer. I think we started back the first time about 6 o'clock, and, in stopping to get the water, I was detained a little time at the well. We did not stop long at General Porter's headquarters the second time, and I think it was between 6 and 7 o'clock—nearly 7 o'clock—when we started back the second time; it was getting dusk.

Question. Was it dark when you got back to General Pope's?

Answer. Yes, sir; it was dark.

Question. Did you stop on the way the second time you started back?

Answer. We stopped at General McDowell's headquarters.

Question. How long do you think you staid there?

Answer. I reckon about 20 minutes. We found the headquarters pretty close together.

Question. Did you stop anywhere else before you got back to General Pope?

Answer. No, sir.

Question. Was it fully dark when you got back to General Pope?

Answer. Yes, sir; it was fully dark; some little time after dark. It was so dark that for a part of the road it was as much as I could do to distinguish the marks by which I knew the road.

Question. Did you see the order delivered into the hands of General Porter?

Answer. Yes, sir; I saw him take the order from Captain Pope.

Question. Was he in his tent or out of doors?

Answer. He was lying down under a shade tree when he took the order.

Question. Did he change his position upon reading the order, or did he continue to lie down?

Answer. I cannot state positively whether he rose to his feet or not, but at the time he was reading the order I noticed that he was lying in this position on the ground [describing him as lying resting on his elbow, his head upon his hand].

Question. Did you leave him lying down on the ground when you came away?

Answer. Yes, sir. Captain Pope also sat down, and they talked; had some little considerable conversation.

Question. Was it after sundown when you left the second time?

Answer. It could not have been far from sunset, but it was not dark.

Question. The question is, was it after sundown?

Answer. I could not state positively; it might have been after sundown; it was not far from sundown.

Question. What was the distance from General Pope's headquarters to where you found General Porter?

Answer. About 5 miles, as near as I could judge from traveling the road.

Question. How much of the way did you gallop?

Answer. That is more than I can tell you. We went as fast as we could from the nature of the road, and as we thought our horses could travel.

Question. Do you remember whether you trotted, or walked, or galloped the most of the way?

Answer. We had to go a great deal of the way quite slow, on account of the road being very bad—rough in places.

Question. Did you gallop any at all?

Answer. Yes, sir; we did. I recollect of galloping some. In other places we had to go quite slow.

Question. Where was General Porter when you left the second time?

Answer. That I could not state. I do not recollect of seeing General Porter the second time. I did not take notice. I could not state positively whether he was there or not, because I did not take any particular notice whether he was there or not.

Question. Did you see anything of the enemy in passing from General Pope to General Porter, or on your return?

Answer. No, sir; I did not. I heard firing on our right a part of the way going out and when we turned back. I still heard firing on our left as we came back.

Question. Can you state the position of General Pope with respect to the right of the enemy commanded by Jackson?

Answer. I should judge that General Pope was past the center of the enemy, toward the left of the enemy. The position of the troops on General Pope's left I could not exactly state.

Question. Did you see about where the right of Jackson's force was at that time?

Answer. All I judged about his right was from the firing, which I judged was not more than a mile and a half from where we started to where I heard the firing. I made inquiry of what troops were in there, and Captain Pope told me, but I have forgotten what they were.

Question. How far was it from where you found General Porter, and where the dispatch was delivered to him, to the right of Jackson's army?

Answer. To where I supposed Jackson's right was would be about three miles and a half, I should judge. I do not know that it was there, but that was where I heard the firing.

Question. Where was General Porter?

Answer. General Porter was on the Hay Market road, right where the road came out from the Bull Run battle-field, running from the stone house on the battle-field of Bull Run to Manassas Junction. It intersected with the Hay Market road right there at the railroad.

Question. In what direction does the Hay Market road run? Is it the

country road running from the railroad up to the old Bull Run battle-field?

Answer. Yes, sir. It may be called the Gainesville road. I call it the Hay Market road.

The examination by the court here closed.

Examination by the ACCUSED:

Question. Are you a native of Virginia?

Answer. No, sir.

Question. How often had you been in that part of Virginia before?

Answer. I had been there some four or five times. I had traveled over the Bull Run battle-field and to Catlett's Station, and from there up through to the valley of Virginia. I was once down as far as Fredericksburg. I had been on several scouts through that part of the country.

Question. Are you a native of Ohio?

Answer. Yes, sir.

Question. At what point did you meet General McDowell when you were first going to General Porter?

Answer. He was on the road running from the stone house, on the Bull Run battle-field, out to what I call the Hay Market road, about 2 miles on the road from the stone house.

Question. What troops were with him, if any?

Answer. I did not notice any of the troops very close to him. There were a few orderlies with him. He appeared as if he had come from the right of the road as we were going out. I supposed that the troops that were in there were his own troops.

Question. I understand you to have stated that you went with Captain Pope, who was the bearer of the order, the entire distance between the headquarters of General Pope and where you found General Porter?

Answer. Yes, sir.

Question. Can you tell the court how many roads you traveled, if you traveled more than one?

Answer. We left one road, that appeared to bear a little to our right, and turned a little to our left and went up around—I forget now whether it was a brick house or what it was—some kind of a farm-house that had been kind of destroyed. In going across this distance, it appeared as if there had never been any main road through there. I had been shown the road before by a guide. In coming up to this farm-house, we struck the road, and went right straight out to where we found General Porter.

Question. Then you traveled two roads?

Answer. It was either the road forked there or it was two roads, for the road that went across there seemed as if it was not much traveled.

Question. When you came to the fork that you speak of, what caused you to turn down the fork?

Answer. Leave the forked road, do you mean?

Question. Yes, sir.

Answer. That was the road I had been shown before; I could not state exactly the time when, but it was at the time that General Shields marched through there. I passed over that road with a guide, and he told me that was a little nearer road to get out to the Hay Market road.

Question. By the Hay Market road are we to understand you as meaning the Gainesville road?

Answer. I call it the Hay Market road. It is the direct road we travel running from Manassas Junction to Hay Market, and so on up to Front Royal.

Question. Do you understand it to be also called the Gainesville road?

Answer. It may pass by that name; but I always call it the Hay Market road.

Question. How many roads, if more than one, did you take in returning?

Answer. We came back the same road.

Question. The second time as well as the first?

Answer. Yes, sir. When we first started back, we did not go as far as this house that I speak of, where the road made a turn around it.

The examination of this witness here closed.

Brig. Gen. RUFUS KING (a member of the court), was then called by the Government, and sworn and examined as follows:

By the JUDGE-ADVOCATE:

Question. You will remember that it has been testified here that on the afternoon of the 29th of August last a message was borne from General Porter to you by one of his staff officers, directing that your division should remain where it was, and that this message was communicated to you in the presence of General McDowell, who made a response to it. The question I wish you to answer is, whether you remember any such message to have been sent to you.

Answer. I do not.

Question. Do you remember to have been with General McDowell on the afternoon of that day?

Answer. No, sir.

Question. It was also testified by the same witness, if you will remember, that in reply to this message General McDowell said, "I will take General King's division with me. Give my compliments to General Porter, and say to him that I think he better remain where he is," &c. Do you remember to have heard any such message as that from General McDowell?

Answer. No, sir; I do not remember any circumstance of that kind to have taken place on any day.

Question. Do you think it possible that an interview of that kind, between yourself and General McDowell, with a message of that kind communicated to you and a response of that kind from General McDowell, could possibly have occurred and have now totally escaped your recollection?

Answer. I do not.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Was your command taken by General McDowell at that time, or soon afterward?

Answer. The command was then on the march toward the battle-field of Bull Run. General McDowell, I think, was at its head, with General Hatch.

Question. Where was the command at that time?

Answer. At what time?

Question. On the 29th.

Answer. It was on the 29th of August that the command was on the march from Manassas Junction to the battle-field of Bull Run.

Question. At what point of the road was it?

Answer. It was near Bethlehem church, I think, when General McDowell rode at its head.

Question. On what road was it?

Answer. A part of the division was on the road toward Gainesville, and General Hatch's brigade turned off from that road on to the Sudley Springs road, and the rest of the division followed that brigade on that road.

Question. Do I understand you to say that you and General McDowell were not together on the afternoon of the 29th of August last?

Answer. No, sir; I do not think I saw General McDowell after the morning of the 29th.

Question. How late in the morning?

Answer. I do not think I saw him after 10 o'clock in the morning.

Question. Where was it that General McDowell parted from you?

Answer. I think it was near Manassas Junction.

Question. Did you recognize upon the stand, as a person you had seen before, Colonel Locke?

Answer. No, sir.

Question. Were you, during that day, near Bethlehem church?

Answer. I must have passed that church.

Question. About what time?

Answer. I should think it was after midday.

Question. Did you receive any order at all from General Porter that day by Colonel Locke or any one else?

Answer. Not to my recollection.

Question. Had your division been under the command of General Porter before that day?

Answer. I think the first order I got that day was to follow General Porter's corps on the road to Gainesville, immediately after his corps, which I did.

Question. Do you recollect whether you were at any time with General McDowell at the head of the column, when the column turned off to go to the battle-field?

Answer. No, sir. I think General Hatch, who commanded the leading brigade, was with him; and I believe my adjutant-general, Captain Chandler, chief of my staff, was also with him.

Question. Were you unwell that day?

Answer. Yes, sir.

Question. When did you leave the column altogether?

Answer. I rejoined the division about 8 o'clock of the evening of the 29th.

Question. Did you continue to be unwell on the 30th?

Answer. I did.

Question. As you were so unwell during the 29th as to be unable to join your column during a greater part of the day, and also so unwell on the 30th, are you satisfied that you have a clear recollection of the events of the 29th?

Answer. I think I have.

Question. Did you see General Porter at any time during the 29th or the 30th? And, if you did, state where you saw him.

Answer. I saw General Porter on the morning of the 29th, before we moved from Manassas Junction, or from that neighborhood. I think I saw him again on the morning of the 30th, near the headquarters of General Pope and General McDowell, close to the battle-field. I was lying down there, and I think I saw General Porter there.

The examination of this witness here closed.

Brig. Gen. B. S. ROBERTS was then recalled by the Government, and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state whether you have any knowledge of the hour at which General Pope and General McDowell met for the first time on the afternoon of the 29th of August last, and where they met?

The accused objected to that question, unless the purpose of the question was first stated.

The judge-advocate said: The purpose is very obvious. Lieutenant Weld, a witness on the part of the accused, stated in his testimony that he left General Porter at 4 o'clock on the afternoon of the 29th of August last, bearing a message; that he communicated that message to General Hatch, who stated that they were driving the enemy, which statement he immediately wrote down and sent back to General Porter. Then he had an interview with General McDowell and General Pope together, at 5 o'clock in the afternoon, and the message which General Pope sent was, "We are having a hard fight." The purpose of this question is to show that General McDowell and General Pope met for the first time on that afternoon at a much later hour, and, therefore, if any such message was sent to General Porter, it must have been sent at a much later hour than that named by the witness for the accused.

The accused further objected to the question being propounded to the witness now upon the stand, upon the ground that General McDowell himself was the proper person of whom to make the inquiry as to when he first met General Pope on that afternoon. The court was thereupon cleared.

After some time the court was reopened, and the judge-advocate announced the decision of the court to be that the witness answer the question.

The question was again stated as before recorded.

Answer. About 6 o'clock on that afternoon, perhaps a little before, I passed with General Pope to the extreme left of the field, and in returning from there, on reaching a point where the road coming in from the direction of Manassas Junction intersects the road from Gainesville to Centreville, we met General McDowell, and that was the first time that General McDowell had been on the battle-field that day, and the first time that General Pope met him on that day.

Question. At what hour of the day was that?

Answer. We galloped rapidly over the field, and I think it must have been fifteen or twenty minutes, or half-past 6 o'clock in the afternoon.

Question. Were you with them from that time forward until the battle closed?

Answer. No, sir; some orders were given by General Pope when he returned in the direction of his headquarters.

Question. Will you state when General Pope gave directions, if he did give any such, to General McDowell to move his forces upon the right?

Answer. General Pope directed one division of General McDowell's corps to relieve

General Reno, who was toward the right, to the right of the center. This was about half-past 6 o'clock that afternoon.

Question. Were you present when that order was given?

Answer. Yes, sir; and General Pope directed the balance of General McDowell's force to move in front of the center, in the direction of the Gainesville road from Centreville.

Question. Will you state what knowledge, if any, you have from your knowledge of the battle-field and the country around it that day, of the forces of the enemy, amounting to from 12,000 to 24,000 men, being in position in the immediate front of General Porter's command, as indicated by the testimony introduced here by the defense?

Answer. I was without any especial command on that day, and was observing the whole battle from an early hour in the morning until its close. General Pope requested me, with a lorgnette that he furnished me, to particularly watch all the motions of General Longstreet's army, which he knew would be coming in from Thoroughfare Gap or Hopewell Gap. And before leaving Centreville I had, for nearly an hour, as I suppose, been noticing all of the movements in that direction, so far as I could judge of them from the dust; and I judged, from the distance that the force that created that dust would be obliged to move to get on the battle-field and form there, that it would be late in the afternoon before they could do so. During that afternoon, on the battle-field, in the expectation that an attack would be made on the enemy's right by General Porter's forces, I was noticing particularly in that direction the movements of the enemy's forces, so far as I could judge of them through a glass by the dust, and I was convinced that the force that came through Gainesville by the Hopewell and Thoroughfare Gaps—as I think they came through both—came directly down the Gainesville road on to the battle-field, and did not go to their right, on the road leading through Manassas Junction to Gainesville; and I have other reasons for believing that those forces did not go in that direction, and that the forces in front of General Porter were not forces that came on to the field and to his front on that day. Those reasons are these: That two or three times during the day it was reported to General Pope that the enemy was turning his extreme right, and twice he directed me to send cavalry in that direction to learn what it was. I sent cavalry there twice, and found that it was only a force of mounted men, with some light artillery, who were watching all of our movements on our right flank, and I inferred that it was a similar force to that which was upon our left, watching our movements there, which were in front of General Porter.

Question. Did your position give you such a view of the field in front of General Porter's command as to enable you to express with confidence an opinion as to any probable force that was in his front?

Answer. I was in a position where I noticed the flashing of guns, which I at that time supposed to be General Porter's guns, and which I now know were his guns and those of the enemy, and to notice the dust, if any, which columns of troops would have raised if they had been marching in that direction. The direction from Gainesville to the battle-field is quite different from Gainesville to the place where this firing occurred, which, I think, was between 12 and 1 o'clock; and I was watching particularly the dust and the movements in that direction during all that afternoon, for I was hourly expecting that General Porter would come in from that direction.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. What was the extent of the force of the enemy that General Pope fought on the 29th of August—the entire force?

Answer. I have estimated the force of the enemy that he fought until toward the evening, in the main battles during the day, at from 35,000 to 40,000.

Question. Did you understand that Longstreet's corps constituted that part of the enemy's force?

Answer. I think Longstreet's forces engaged General McDowell's forces after sundown on that day.

Question. Not before?

Answer. No, sir.

Question. Do you know when Longstreet's corps arrived on the ground, or did you hear at the time?

Answer. I think the greater part of his force was coming on the ground after about 2 o'clock in the afternoon, arriving and forming as they came on.

Question. Do you know now, or did you know at the time, whether General Hill's force had also formed a junction?

Answer. I have always understood that General Hill's forces, and General Ewell's and General Jackson's, had joined before we fought on the morning of that day.

Question. I do not mean General A. P. Hill's, but General D. H. Hill's forces, or did you know such a Hill?

Answer. I know that there were two Hills.

Question. Are you understood now as saying that the force of the enemy, from 35,000 to 40,000 men, comprehended Jackson's forces and Hill's forces?

Answer. I understood that we were engaging Jackson's, Ewell's, and one of the Hill's forces all day; Longstreet's forces, I think, first engaged McDowell's forces in the evening.

Question. How far were you from General Porter's command on the afternoon of the 29th of August?

Answer. At one time, I think, I was within a mile and a half of it, when I went to our extreme left.

Question. Could you see his command, or were there woods intervening?

Answer. I could not see his command; there were woods intervening.

Question. Could you see his immediate front?

Answer. I could not from our extreme left.

Question. Could you see the line of the railroad?

Answer. No, sir.

Question. Do you not think it probable now that an officer of intelligence who was in the battle and on the field could tell the number of men General Porter had to meet better than you, who were out of sight, and only reasoning upon the matter?

Answer. I certainly think he could. But that question assumes what I do not assume in my answer—in relation to the reasoning and not having at any time seen General Porter's position. I was several times during the day where I was satisfied I saw his position and knew it.

Question. At what time was the latest period that you saw his position that day?

Answer. I think about 1 o'clock.

Question. Have you any knowledge, personally, of Lieutenant Weld?

Answer. No, sir.

Question. Have you any recollection of seeing an officer, on the 29th of August, come with a message from General Porter to General Pope or General McDowell?

Answer. No, sir. I have seen the officer here who stated that he bore that message, and I know his person now, but I had never seen him before to my knowledge.

Question. You do not recollect seeing any message from General Porter delivered on that day?

Answer. No, sir.

Question. Do I understand you to say that General McDowell was not on the field until after sunset on the 29th?

Answer. I did not say that.

Question. At what time did he get on to the field?

Answer. Before 6 o'clock in the afternoon, I should think. It was about the center of the field that I first met him.

The examination by the accused here closed.

Examination by the COURT:

Question. On which side of the Manassas Railroad did Longstreet form his line of battle after he came on to the field on the 29th?

Answer. I think he detached a part of his force behind a battery on a hill, which was on the right of the turnpike, but the main force, I think, was formed on the left of the Gainesville and Centreville road; the Gainesville and Groveton road extending the line of Jackson to his right across that road.

Question. Do you know whether it was on the north or south of the Manassas Railroad?

Answer. The Manassas Railroad does not run on to the battle-field of Friday, the 29th of August. I do not think the right of the enemy reached to within a mile or more of the Manassas Railroad. There is another old railroad, to which I supposed you referred, behind which they formed in front of General Pope's column.

Question. Have you any knowledge of another force of the enemy, not forming a junction with this force of the enemy of which you now speak, that did lie over on the Manassas Railroad and in front of General Porter's corps?

Answer. I have already stated that I saw from the direction of the dust caused by the force that moved through Gainesville, that they did not go on that road, but came along the turnpike.

Question. From your knowledge of the position of the enemy on the 29th of August last, will you state how many of them were south of the Manassas Railroad, or in front of General Porter's command?

Answer. I do not believe, from what I know of the enemy's forces, that there was any force in front of General Porter's command on that day, except a cavalry force in observation there, with some light artillery.

The examination of this witness here closed.

The court thereupon adjourned to 11 a. m. to-morrow.

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WASHINGTON, D. C., *January* 6, 1863.

The court met at 10 a. m., pursuant to call of its president.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

The following communication from the Secretary of War was then read:

WAR DEPARTMENT,
Washington City, D. C., January 5, 186 .

Major-General HUNTER, *President, &c., &c.:*

GENERAL: The state of the service imperatively demands that the proceedings in the court over which you are now presiding, having been pending more than four weeks, should be brought to a close without any unnecessary delay. You are, therefore, directed to sit without regard to hours, and close your proceedings as speedily as may be consistent with justice and the public service.

Yours, truly,

EDWIN M. STANTON,
Secretary of War.

Maj. Gen. IRVIN MCDOWELL was then recalled by the Government, and examined as follows:

By the JUDGE-ADVOCATE:

Question. Will you state to the court at what time and place, if you can recall it, you saw General King for the last time on the 29th of August last?

Answer. I do not recollect of seeing General King on that day. I have been trying to recall to mind when I saw him, if I did see him, on that day. I have asked of my staff officers, and tried to refresh my memory on that point, but I cannot recall to mind having met General King on the 29th of August last.

Question. After the interview which you had on the 29th of August with General Porter, of which you have spoken heretofore in your testimony, you stated that you turned down toward or near Bethlehem church. Will you state whether you have any recollection of a messenger—a staff officer—from General Porter, bearing a message, while you were there, and if you made any reply?

Answer. I do not remember anything of the kind.

Question. Have you, or not, any recollection of having, after parting with General Porter on the 29th of August, sent back to him a message like this: "Take my compliments to General Porter, and say to him that I think he better remain where he is," or words to that effect?

Answer. I have no recollection of sending any such message.

Question. Have you, or not, any recollection of having said to General Porter, in your interview, when you first met him on the 29th of August, that that was no place to fight a battle; that he was too far in advance?

Answer. I cannot recollect precisely what occurred between General Porter and myself, or what conversation and what words passed between us at that time. The subject of our conversation, as near as I can recall it to mind, was the order which we each of us had received from General Pope; and particularly that part of it which referred to our not going so far forward that we should not be able to get behind Bull Run that night or before morning. I cannot say what language I used, or how it may have been understood, whilst talking on that point. As to that particular spot or ground, so far as topography was concerned, not being a place for a battle, I have no recollection of having said anything to the effect that it was not a good place to fight on. It was about as good a place, so far as topography was concerned, as any other in that part of the country. I think our conversation was chiefly upon the subject of not putting ourselves in a position to be unable to fulfill the requirements of the order about retiring behind Bull Run, and about not going so far toward Gainesville, or going to Gainesville, that this could not be done. Without being able to say what was said either by him or me, I think, so far as my best recollection goes, that the object and purpose of our conversation at that time was in relation to that point.

Question. Do you recollect at what hour you first met General Pope that evening on the battle-field, or near the battle-field?

Answer. I cannot tell the hour.

Question. Have you any recollection of a messenger from General Porter, bearing an order or message which he first offered to you, and which you directed him to hand to General Pope, alleged to be then in your presence?

Answer. I have not. There may have been, but I have no recollection of it.

Question. Have you been able to fix, from recollection, with any degree of certainty, the hour at which you met Captain Pope, or the messenger bearing the order from General Pope to General Porter, on the afternoon of the 29th of August?

Answer. I think I stated in my first examination here that I did not recollect the hour. All that would enable me to tell anywhere near the hour would have to be fixed by some points that I am not myself able to give. All that I know is, that while going from Bethlehem church to the Henry house hill I met this messenger on the road. I arrived at the Henry house hill, and finding that my division had not been posted on the left of Reynolds, as I had ordered, I went forward, made a reconnaissance myself, came back, sent the division forward, went forward with it, received a message from General Pope, came back to the Sudley Springs road, and took the division north to the turnpike, where I met General Pope. The distance, as I estimated it, from the head of General Porter's column to Bethlehem church was somewhere from 2½ to 3 miles; and the distance from Bethlehem church to the Warrenton turnpike I suppose to be somewhere near 3½ or 4 miles. These are estimates. I met the messenger of General Pope—the officer—somewhere between Bethlehem church and the turnpike. If the time could be fixed when I saw General Pope, and how long I was occupied in bringing the division forward, then you can estimate that this took place somewhere on the road. That is all that I can tell. I got upon the battle-field some time before sundown; that I can state—that I arrived on the Henry house hill some time before sundown.

Question. As early as 6 o'clock, probably?

Answer. When I got on top of that hill, it must have been an hour at least before sunset.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Do I understand you to say that you have no recollection of having met General King at all on the 29th of August last?

Answer. The witness asked that his answer to the first question in the examination of to-day might be read as his answer to the question now asked by the accused, and it was accordingly read as follows: "I do not recollect of seeing General King on that day. I have been trying to recall to mind when I saw him, if I did see him, on that day. I have asked of my staff officers, and tried to refresh my memory on that point, but I cannot recall to mind having met General King on the 29th of August last."

Question. There are some facts, perhaps, that will recall it to your recollection?

Answer. That may be.

Question. General King states that he saw you on the morning of the 29th of August.

Answer. That may be.

Question. Have you any recollection of having dismounted at any time?

Answer. Most distinctly. It is always my rule, whenever I happen to go forward myself, to dismount and rest my horse, and that is a direction which I give to my staff, my escort, orderlies, and cavalry.

Question. Have you any recollection of having dismounted when you got to the neighborhood of Bethlehem church, after you left General Porter, and if there was any officer with you at that time near a fence?

Answer. I recollect distinctly having dismounted at the time referred to in the question, and that there were officers near me. I think it was under a tree. I have no recollection of a fence.

Question. Can you recollect the name of any general officer who was with you at that time?

Answer. I think General Bayard was with me, or came to see me, and I think I may have received visits from different officers of my command; perhaps General Patrick, perhaps General Gibbon. I am merely naming different officers who may have visited me, though I do not specially recollect of their coming near me or of my having seen them. I stopped at that place, and from that place sent out orders to get the corps on the Sudley Springs road, to the north. It was from that place that I sent the officers of my staff to get these different brigades, divisions, &c., on this road. But what officers may have come to see me, or may have been with me, for longer or shorter periods of time, I do not recollect. It was a matter that made no impression upon me at the time, for I was occupied with other matters of thought.

Question. Do you remember whether General King's division was there?

Answer. I do, most distinctly.

Question. His division being there, if the general was there, do you not think it probable he would have been with you on that occasion?

Answer. The general was not in command of his division during the whole of that day. But when he left the command of that division I do not know. If he had been there, it is more than likely I would have seen him.

Question. Do you recollect whether on that occasion you wore a blouse over your uniform?

Answer. Upon my word, I do not recollect.

Question. Are you in the habit of wearing it on such occasions?

Answer. On what occasions?

Question. During a battle or while traveling.

Answer. That depends upon circumstances, whether I am cold or whether it is raining, &c. I sometimes do and sometimes do not. That is all the answer I can give.

Question. Can you recollect whether on that day you received any message or order at all from General Porter?

Answer. Yes, sir; I received messages from him on that day.

Question. Can you tell the court particularly about any one of those messages?

Answer. I answered one of his messages in writing, but I have no copy of that note. I do not know whether I wrote it, or whether it was written by another, and signed by me. I think his notes were asking how the battle was going on, or what was the condition of things over with us, so far as I can recollect.

Question. Did you know at that time, or do you now know, Colonel Locke, who is the assistant adjutant-general of General Porter?

Answer. I have been told that he is; and if he is the same person that I saw at General Porter's headquarters, at Upton's Hill, as his adjutant-general, I know him. I think I met him here to-day in the ante-chamber.

Question. Can you tell the court if you have any recollection of having seen that officer at all on the 29th of August?

Answer. It is very likely I saw him; but if I did, it made no impression on my mind more than many other officers whom I saw.

Question. Have you any recollection that any one of the messages that you say General Porter sent you that day was borne by Colonel Locke?

Answer. Having said that I do not recollect seeing Colonel Locke at all during that day, of course that answers the question. What I meant when I said I might have seen that officer on that day, was simply this: There were many officers around General Porter, but I do not recollect that officer more than I do any of the others. I distinctly recollect seeing General Porter; that would very naturally make an impression on me. But who were around him, what officers were near him, I do not recollect.

Question. Have you any recollection of having been at or near General Pope's headquarters, with General Pope, on the afternoon of the 29th of August?

Answer. Yes, sir; afternoon, in one sense.

Question. About what time?

Answer. It was after the division had been ordered back to the Sudley Springs road, and north on that road toward the turnpike. It must have been somewhere in the vicinity of sundown that I first saw him. General Pope's headquarters, as I afterward learned them, were some distance from where I met him; that is to say, several hundred yards, on a hill by a wood. I did not see him at those headquarters until after nightfall.

Question. Do you know where General Pope's headquarters were on the 30th of August?

Answer. Yes.

Question. Were they at the same place where they were on the 29th, do you know?

Answer. I do not know where they were all the 29th. I fancy that on the morning of the 29th they were at one place, and they were changed several times during the day. I only knew where they were on the night of the 29th.

Question. Can you tell whether you met General Pope in the evening or afternoon of the 29th at a point near where his headquarters were on the morning of the 30th?

Answer. When I first met General Pope on the afternoon of the 29th, it was in the northwest angle made by the Sudley Springs road with the Warrenton turnpike, and near their intersection. General Pope's headquarters that night and the next day were in the northeast angle made by those two roads, and I judge some 300 or 400 yards from their intersection, in the edge of a wood, on the top of quite a high hill, on the north or left bank of Young's Branch.

Question. Have you any recollection that at the point you have spoken of as the point where you met General Pope on the afternoon of the 29th, any conversation took place between yourself and General Pope in relation to the movement of one of your divisions to the right?

Answer. No, sir. The first order given to me by General Pope that afternoon, sent to me, I think, through General Elliott, I received beyond the woods on the Henry house hill, which order was to bring the division north, it being the intention, as I understood, to re-enforce General Reno, who was in on the right and in front of the then line, General Pope's order to me, personally, was to the effect that the enemy were falling back, and he directed me to send a division right up the Warrenton turnpike after them or at them, with the exception of Gibbon's brigade, which, in compliance with the previous order, went forward to re-enforce Reno, with the mass of the artillery of that division.

Question. Do you remember who was with you when you met General Pope on the afternoon or the evening of the 29th?

Answer. I do not. I will mention one thing: I had a very large staff, and it is impossible for me to recollect who were with me at one time or another, unless there is something particular to call my attention to it.

The examination by the accused here closed.

Examination by the COURT:

Question. From your knowledge of the condition of things on the 29th of August, was there any considerable force of the enemy in front of General Porter's corps, near the Manassas Railroad, on the south side of it?

Answer. I have no positive knowledge on that point; I have not supposed that there was, but I cannot support that supposition by any positive facts.

Question. If there had been any such force in front of General Porter's corps and south of the railroad, do you think, from your knowledge of the ground, that would have prevented General Porter from obeying the order to attack the right wing of the main body of the enemy?

The accused objected to the question, as not being in the nature of rebutting evidence. No member of the court sustaining the objection, it was ordered that the question be answered.

Answer. I do not know where the right wing of the main body of the enemy was at that time. Such a force of the enemy, in such a position, would itself most likely have been the right wing of the enemy, so far as I can imagine the case. The distance from General Porter's head of column to the road at that time was not so great as to have enabled a large force of the enemy to be between them, and to be detached from the main body of the enemy.

Question. At what time did you last see General Porter on the 29th?

Answer. I have stated, in my first examination, that I could not fix the time when I left General Porter to go back to the head of my own corps, near the Bethlehem church, and I am not able to do so at this time. It was in the forenoon, at least.

Question. Are you, or are you not, confident that you did not send a message on the 29th of August to General Porter that he better remain where he was?

Answer. I do not think I did.

The examination of this witness here closed.

Maj. Gen. JOHN POPE recalled by the Government, and examined as follows:

By the JUDGE-ADVOCATE:

Question. In your telegraphic dispatch of the 30th of August last, which has been read to the court, giving to the Government an account of the battle of the 29th of August, you say that you fought with the combined forces of the enemy. Will you state what is the meaning of the word "combined," as used by you in that dispatch?

Answer. During the whole morning, and until late in the afternoon of the 29th, the forces with which we were fighting, as I then understood and still understand, were the forces of Jackson, Ewell, and Hill; but before the battle closed on the 29th—I think at the time or about the time that the division of King was pushed to the front—a portion of the forces of Longstreet, leading, as I understood, the main portion of Lee's army, had gotten on to the field; how many I do not know. In that dispatch I merely meant to say, as I had previously reported to the War Department, that we had interposed between Jackson's forces and Longstreet's forces; that, on the 29th, the combined forces were those of Longstreet and Jackson.

Question. Have you any recollection of having received on the afternoon of the 29th, say about 5 o'clock, a written message from General Porter, which you retained?

Answer. I have no remembrance of that at all.

Question. Have you any recollection of having sent to him on that evening, about that hour, a verbal message by any of his officers?

Answer. I do not remember it.

Question. Do you remember about the hour that you first saw General McDowell on that afternoon?

Answer. I think it was about half-past 5, or between that and 6 o'clock in the afternoon.

Question. And at what point?

Answer. I had been visiting the left of our line in the front, and was returning to the point where I had established my headquarters, when I met General McDowell on the Warrenton pike, I think a little west of where the Sudley Springs road comes into the pike.

Question. Will you state what opportunity General Porter had, previous to and at the time the dispatches from him to General Burnside, which have been read in evidence here by the Government, were written, to know the condition of the Army of Virginia, and was the information in regard to that army, as given in those dispatches, correct?

The accused objected to the question.

The court was thereupon cleared. After some time the court was reopened, and the judge-advocate announced the decision of the court to be that the question shall not be answered.

The examination by the judge-advocate here closed.

Examination by the ACCUSED:

Question. Have you any recollection that, having met General McDowell on the afternoon or evening of the 29th, you had any conversation with him as to the movements of any portion of his own command?

Answer. I think I had not. I do not remember. I think the orders that I gave to General McDowell I sent to him by aides. I had a moment's conversation with him on the road when I first met him, but I do not remember what it was about.

The examination of this witness here closed.

The prosecution here rested their case.

The accused asked permission to call two witnesses to testify to certain points in the rebutting evidence.

The court was thereupon cleared. After some time the court was reopened, and the judge-advocate announced that the court decide that the request of the accused be granted.

Lieut. Col. FREDERICK T. LOCKE was then recalled by the accused, and examined as follows:

By the ACCUSED:

Question. When you received the message, to which you have testified, from General Porter for General King, were you at once impressed with the importance of that message—its special importance at that time?

Answer. I was.

Question. Why?

Answer. Because, first, I knew that General King was to operate with our corps that day; I knew that, because I had received the order to General Porter from General Pope in the morning, at the hands of General Gibbon, in which General Porter was directed to move toward Gainesville and take General King with him. General King being in the rear of our column, I presumed from his position, and thinking, from the operations that were going on, that we were going to have a fight, that he would be in reserve. Therefore, when General Porter gave me that message, I presumed that it was to hold General King where he was, so that he could act in cooperation with the rest of the command in case it was necessary.

Question. Did you then, at the time of receiving the message, expect that battle would probably be joined very soon?

Answer. Yes, sir.

Question. When you received from General McDowell the message to which you have testified, to the effect that he would carry General King with him, and that General Porter better remain where he was, did you or not regard that message from General McDowell as of still greater consequence and moment?

Answer. Yes, sir; it impressed me very strongly all the way up to the time that I gave it to General Porter.

Question. Did you make the best of your way to General Porter in haste to deliver the message to him?

Answer. Yes, sir.

Question. Do you recollect distinctly that your sense of the character of that message induced you to deliver it to General Porter in a particular manner?

Answer. Yes, sir; it did impress me in that way, so that I delivered it to him in an undertone of voice, as I thought it was for his ear alone.

Question. Did these facts to which you have testified impress both of these messages upon your memory indelibly?

Answer. Yes, sir. I have never forgotten the messages, or the incidents connected therewith.

Question. About that time, after the day was over, have you any recollection that you mentioned to any other officer or officers the having borne and delivered these messages, or either of them?

Answer. Toward the close of the day, when I was sent by General Porter to General Morell with the order for him to move forward his division and attack the enemy, on my way up to General Morell, I passed Colonel (now General) Warren. He asked me where I was going, and I told him. Said he, "I will ride with you." And I told him of the message which General McDowell had given to me to carry to General Porter the afternoon of that day. That I remember distinctly.

Question. Do you remember the precise spot where you met the two officers in whose presence you delivered the message from General Porter?

Answer. I think I do.

Question. Have you any doubt that you can indicate the spot exactly?

Answer. No, sir. I think if I was on the same ground, I could go right to it, or within a very short distance of it.

Question. And you could state to the court the topographical details by which you could find it, could you not?

Answer. Yes, sir.

Question. At that time did you know General King, personally or by sight?

Answer. I had never seen General King, to my knowledge, before that day—that afternoon.

Question. Did you know General McDowell?

Answer. Very well.

Question. When you delivered the message from General Porter to the officer whom you met, did you first ask him if he was General King?

Answer. I did; because I did not know General King, and I wished to be sure.

Question. Do you remember distinctly that at that time the two officers were standing close to a fence, and that one of them was partially with his arm upon it?

Answer. They were standing close to a fence, on the right-hand side of the road going toward Manassas. General McDowell stood to the right of General King. As near as I can recollect, General King stood against the fence, with his arms in an easy manner.

Question. After delivering that message to the officer in question, did you, to the best of your recollection, see General King again until you saw him in this room?

Answer. I did not see General King, that I recollect, until I saw him the first day that he appeared in this room as a member of this court. I came in the room, and he sat by this window here, and I recognized in him the officer I met on that day with General McDowell.

Question. Your attention having been directed to the message and its delivery, as you have stated, did you, at the time of delivering it to General King, notice a resemblance in personal appearance to any other officer, and was that resemblance recalled to your mind again when you saw General King in this room?

Answer. Yes, sir. General King always reminds me of General Seymour.

Question. Are you entirely positive, as much as you can be of any fact, that you did deliver to General Porter, on the afternoon of the 29th of August, words which purported to be a message from General McDowell, to the effect that General King was to be taken away, and that he (General Porter) was to remain there where he was?

Answer. I am positively certain of it.

The examination by the accused here closed.

Examination by the COURT:

Question. Did General King make any reply to your message?

Answer. I think not in words. As near as I can recollect, General King deferred, by a motion of his hand or head, to General McDowell.

Question. Was this message from General McDowell to General Porter an order, or in the nature of an order?

Answer. I considered it so.

Question. Were you a staff officer of General Porter?

Answer. Yes, sir; his chief of staff.

Question. How long have you been in the service?

Answer. I have been actively engaged in service since the 19th of April, 1861.

Question. Have you had a military education?

Answer. I have been connected with military for fifteen or sixteen years.

Question. Are you sure that when you saw either of those two officers alone, you could recognize General King from General Seymour?

Answer. Yes, sir; I know General Seymour intimately.

Question. Are you certain that the general officer you saw on the 29th of August with General McDowell was not General Seymour?

Answer. Yes, sir..

The examination of this witness here closed.

Lieut. STEPHEN M. WELD recalled by the accused, and examined as follows:

By the ACCUSED:

Question. Having testified in chief that on the afternoon of the 29th of August you delivered to General Pope, in the presence of General McDowell, a message from General Porter, about 5 o'clock, state to the court any facts, not already stated, which make you certain that you are not mistaken in giving that testimony.

Answer. After I left General Hatch on that day, and while going to General McDowell, I met Captain Haven, of General McDowell's staff. I then went to General Pope, and after leaving him and going to the road, I looked toward our batteries, which were firing, and the sun shone right in my face, so that I could not see plainly at all. I remember that as distinctly as can be. And also I remember very plainly General Pope putting that message I gave him in his left-hand vest pocket. He was facing to the south, and General McDowell was facing about the opposite way. I am very positive about it, indeed. There was no one with General Pope then, except General McDowell.

Question. You know then, positively, the fact that when you delivered that message the sun had not set?

Answer. I am as positive as I can be. I know it.

Question. State the spot where you delivered the message, as you recollect it, if you can describe it.

Answer. It was north of what I supposed to be the Warrenton pike, and east of a road which I think is the Sudley Springs road; very near both roads. I would like to state that there might have been an orderly with General McDowell at that time; I am not positive about that.

Question. Are you entirely positive that, after your return to General Porter, you saw Capt. Douglass Pope arrive?

Answer. No, sir; I cannot say that it was Capt. Douglass Pope; I can only say that I am certain that a messenger from General Pope arrived.

Question. In other words, you are perfectly satisfied that your testimony on that point, as given in chief, is correct?

Answer. Yes, sir.

The examination of this witness here closed.

The testimony in this case was here concluded.

The accused, in reply to the question as to how much time he desired to prepare his defense, stated that he desired the court to give him until Saturday morning next, at which time he would be prepared to lay before the court his defense in writing.

The court was thereupon cleared.

After some time the court was reopened, and the judge-advocate announced that the court had determined to grant to the accused the time requested, until Saturday morning next, to prepare his defense.

The court thereupon adjourned to 10 a. m. to-morrow.

—

WASHINGTON, D. C., *January* 7, 1863.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford,

U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused was also present.

The minutes of the last session were then read and approved.

The court was thereupon cleared.

After some time the court was reopened.

Whereupon the court adjourned to 10 a. m. to-morrow.

—

WASHINGTON, D. C., *January* 8, 1863.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. Joseph Holt, Judge-Advocate-General.

The minutes of the last session were then read and approved.

The court was thereupon cleared.

After some time the court was reopened.

Whereupon the court adjourned to 10 a. m. to-morrow.

—

WASHINGTON, D. C., *January* 9, 1863.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The minutes of the last session were then read and approved.

The court was thereupon cleared.

After some time the court was reopened.

Whereupon the court adjourned to 10 a. m. to-morrow.

—

WASHINGTON, D. C., *January* 10, 1863.

The court met pursuant to adjournment.

Present, Maj. Gen. D. Hunter, U. S. Volunteers; Maj. Gen. E. A. Hitchcock, U. S. Volunteers; Brig. Gen. Rufus King, U. S. Volunteers; Brig. Gen. B. M. Prentiss, U. S. Volunteers; Brig. Gen. James B. Ricketts, U. S. Volunteers; Brig. Gen. Silas Casey, U. S. Volunteers; Brig. Gen. James A. Garfield, U. S. Volunteers; Brig. Gen. N. B. Buford, U. S. Volunteers; Brig. Gen. J. P. Slough, U. S. Volunteers; and Col. J. Holt, Judge-Advocate-General.

The accused, with his counsel, was also present.

The minutes of the last session were then read and approved.

The accused then presented a written address (marked "Defense of Accused," and appended hereto), which was read by his counsel in his defense.

The judge-advocate then submitted the case to the court with the following remarks:

I will simply remark that this case has been thoroughly and most patiently investigated. A continuous session of some forty-five days sufficiently attests this. Indeed, the greater part of the evidence touching the more important and the more severely contested points has, by re-examination and cross-examination, been again and again impressed upon your minds, so that I now feel entirely satisfied that it is completely comprehended and appreciated by you in all its bearings.

Whatever, therefore, of inaccuracies of interpretation of testimony, and whatever of illogical deduction from it, may have found a place in the very elaborate defense of the accused, which has been read, may be safely left for their correction to the recollection and judgment of the court.

To prepare a written reply, in keeping with the gravity of this proceeding, to the argument of the accused, would require several days, thus involving a delay which it is most important to avoid. From this consideration, and from the urgent demand which exists for the services of members of this court in other and more active fields of duty, it is felt that the public interests will be best subserved by asking, as I now do, that you will proceed at once to deliberate upon and determine the issues which are before you.

The court was thereupon cleared for deliberation, and having maturely considered the evidence adduced, find the accused, Maj. Gen. Fitz John Porter, of United States Volunteers, as follows:

Of the 1*st specification* of 1ST CHARGE, "Guilty."
Of the 2*d specification* of 1ST CHARGE, "Guilty."
Of the 3*d specification* of 1ST CHARGE, "Guilty."
Of the 4*th specification* of 1ST CHARGE, "Not guilty."
Of the 5*th specification* of 1ST CHARGE, "Not guilty."
Of the 1ST CHARGE, "Guilty."
Of the 1*st specification* of 2D CHARGE, "Guilty," except so much of the specification as implies that he, the accused, "did retreat from advancing forces of the enemy," *after* the receipt of the order set forth in said specification.
Of the 2*d specification* of 2D CHARGE, "Guilty."
Of the 3*d specification* of 2D CHARGE, "Guilty," except the words "to the Manassas Junction."
Of the 2D CHARGE, "Guilty."

And the court do therefore sentence him, Maj. Gen. Fitz John Porter, of the United States Volunteers, to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States.

D. HUNTER,
Major-General, President.
J. HOLT,
Judge-Advocate.

There being no further business before them, the court adjourned *sine die.*

D. HUNTER,
Major-General, President.
J. HOLT,
Judge-Advocate.

[Indorsements.]

HEADQUARTERS OF THE ARMY,
Washington, January 13, 1863.

In compliance with the Sixty-fifth Article of War, these whole proceedings are transmitted to the Secretary of War, to be laid before the President of the United States.

H. W. HALLECK,
General-in-Chief.

JANUARY 21, 1863.

The foregoing proceedings, findings, and sentence in the foregoing case of Maj. Gen. Fitz John Porter are approved and confirmed, and it ordered that the said Fitz John Porter be, and he hereby is, cashiered and dismissed from the service of the United States as a major-general of volunteers, and as colonel and brevet brigadier-general in the regular service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States.

ABRAHAM LINCOLN.

EXHIBITS.

[Government Exhibit A.]

(See map accompanying.)

[Government Exhibit B.]

The President of the United States of America to all who shall see these presents, greeting:

Know ye that, reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of John Pope, I have nominated, and, by and with the advice and consent of the Senate, do appoint him major-general of volunteers in the service of the United States, to rank as such from the 21st day of March, 1862. He is, therefore, carefully and diligently to discharge the duty of major-general, by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all officers and soldiers under his command to be obedient to his orders as major-general. And he is to observe and follow such orders and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the general or other superior officers set over him, according to the rules and discipline of war. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand, at the city of Washington, this 22d day of March, in the year of our Lord one thousand eight hundred and sixty-two, and in the eighty-sixth year of the Independence of the United States.

ABRAHAM LINCOLN.

By the President:
EDWIN M. STANTON,
Secretary of War.

ADJUTANT-GENERAL'S OFFICE,
December 19, 1862.

Official copy.

JAMES B. FRY,
Assistant Adjutant-General.

REFERENCES.

M(2). JACKSON'S LINE.
R. REYNOLD'S LEFT AS LAID DOWN BY
M(3) MOREL'S POSITION. " " " "
P. PORTER'S HD. QRS. " " " CAR
M(4) ENEMY'S POSITION. "

GOVERNMENT EXHIBIT A.

ONLY SO MUCH OF THE LARGER MAP COPIED AS EMBRACES THE THEATRE OF OPERATIONS INVOLVED.

Scale, 1 inch to 1 mile.

REFERENCES.

M(2). JACKSON'S LINE.
R. REYNOLD'S LEFT AS LAID DOWN BY HIM.
M(3) MORELL'S POSITION. " " " " "
P. PORTER'S H.D. QRS. " " " CAPT POPE.
M(4) ENEMY'S POSITION. " " MORELL.

ADJUTANT-GENERAL'S OFFICE,
March 22, 1862.

Recorded, volume 17, page 67.

L. THOMAS,
Adjutant-General.

The President of the United States of America to all who shall see these presents, greeting:

Know ye that, reposing special trust and confidence in the patriotism, valor, fidelity, and abilities of Fitz John Porter, I have nominated, and, by and with the advice and consent of the Senate, do appoint him major-general of volunteers in the service of the United States, to rank as such from the 4th day of July, 1862. He is, therefore, carefully and diligently to discharge the duty of major-general, by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all officers and soldiers under his command to be obedient to his orders as major-general. And he is to observe and follow such orders and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the general, or other superior officers set over him, according to the rules and discipline of war. This commission to continue in force during the pleasure of the President of the United States for the time being.

Given under my hand, at the city of Washington, this 16th day of July, in the year of our Lord one thousand eight hundred and sixty-two, and in the eighty-seventh year of the Independence of the United States.

ABRAHAM LINCOLN.

By the President:
EDWIN M. STANTON,
Secretary of War.

ADJUTANT-GENERAL'S OFFICE,
December 19, 1862.

Official copy.

JAMES B. FRY,
Assistant Adjutant-General.

ADJUTANT-GENERAL'S OFFICE,
July 16, 1862.

Recorded, volume 17, page 85.

L. THOMAS,
Adjutant-General.

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[Government Exhibit C.]

WAR DEPARTMENT,
Washington City, D. C., January 5, 1863.

Major-General HUNTER, *President, &c.:*

GENERAL: The state of the service imperatively demands that the proceedings in the court over which you are now presiding, having been pending more than four weeks, should be brought to a close without any unnecessary delay. You are, therefore, directed to sit without regard to hours, and close your proceedings as speedily as may be consistent with justice to the public service.

Yours, truly,

EDWIN M. STANTON.
Secretary of War.

(Accused, Exhibit A.)

UNITED STATES MILITARY TELEGRAPH,
From Advance. (Received August 25, 1862.)

General BURNSIDE:

Have you received my dispatches indicating my movements to-morrow? You know that Rappahannock Station is under fire from the opposite hills, and the houses were destroyed by Pope. I do not like to direct movement on such uncertain data [as] that furnished by General Halleck. I know he is misinformed of the location of some of the corps mentioned in his dispatches. Reno has not been at Kelly's for three days, and there is only a picket at Rappahannock Station, and Kearny, not Banks, is at Bealeton. Reno and Rey[nolds] are beyond my reach. I have directed Sykes to go to Rappahannock Station at 5 to morrow, and shall go there myself, via Kelly's Ford. Does General McClellan approve? About daybreak my aide and scout will be in from Balou [below]. Have you any orders? I want cavalry to remain with me for a few days. For want of grain and provisions, I have had to send home some who came up.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit B.)

UNITED STATES MILITARY TELEGRAPH,
From Advance. (Received August 25, 1862.)

Maj. Gen. AMBROSE E. BURNSIDE:

My aide has just returned from Bealeton. He says Birney is there with two regiments, one at Rappahannock Station. Pope's headquarters are at Warrenton. Kearny at Warrenton Junction; King went to Warrenton to-day; Hooker was to go; Reno is at Sulphur Springs; Reynolds is at Warrenton; Banks and Sigel are at Sulphur Springs, fighting there to-day. A deserter came over to-day, crossing at Rappahannock Station; said enemy moving his forces to our right. Those left down this way are their regiments, which have been cut up in the battles. At Brandrett's [Brandy?] Station are 500 wagons, guarded by a small force of infantry and a squadron of cavalry. At Rappahannock Station the river is fordable for all arms. Are my arrangements satisfactory?

F. J. PORTER,
Major-General.

—

(Accused, Exhibit C.)

UNITED STATES MILITARY TELEGRAPH,
From Advance, Barnett's Ford—8 a. m.
(Received August 26, 1862.)

General BURNSIDE:

All quiet at and on the Rappahannock during the night. At Kelly's Ford the impression exists that two brigades of infantry, with one regiment of cavalry, are opposite Rappahannock Station. A squadron was seen last evening opposite Kelly's. A company from Bealeton to-day say Kearny is there with his whole division. I expect Sykes to halt about 4 miles short of Bealeton, at water; and, until I can find a proper camp,

water is to be had only by going within range from opposite shore. I shall go by Kelly's Ford, and pass through Rappahannock Station and Bealeton to Sykes, where my camp will be. Please have the telegraph run up that way, by troops. Barnett's and Kelly's Fords will communicate with you by telegraph. To-night many men are sick, and for want of medicines and ambulances will suffer. Have directed trains to be sent for grain.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit D.)

UNITED STATES MILITARY TELEGRAPH,
From Deep Creek. (Received August 25, 1862.)

General BURNSIDE:

The report to me that all Pope's cavalry at Kelly's cavalry [Ford ?] was withdrawn, is an error. He left a small company after visiting the fords. I find, or think, the enemy is merely watching us at Barnett's, and was within striking distance of Kelly's. Sufficient force to resist crossing. The enemy has shown himself in small parties. I have decided to leave Griffin at Barnett's for a day longer, the remainder of Morell to Kelly's, and to-morrow, depending on information I get from a party I have sent to Rappahannock Station, to push Sykes there, or halt him in supporting distance of Morell, ready to push on the Rappahannock Station. I find the river can be crossed almost anywhere by cavalry and infantry, so that, with the exception of the prominent fords, watching is all I can do. The special fords I can hold easily. At Rappahannock Station are four companies of R. I. cavalry, and Kearny's pickets are at Bealeton. Reno and Reynolds I can hear nothing of. Reno's batteries have been withdrawn from Kelly's and Barnett's. The country is miserable, scarcely producing good telegraph poles and weeds, much less furnish subsistence for man or beast for this army.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit E.)

UNITED STATES MILITARY TELEGRAPH,
From Bealeton Station. (Received August 26, 1862.)

General BURNSIDE:

Have been to Rappahannock Station. I find it in possession of General Kearny, whom I will relieve to-morrow. No enemy in front; river fordable anywhere. Sykes is here; Morell, with two divisions, is at Kelly's, and Griffin at Bealeton; Reno is expected to pass to my left.

F. J. PORTER.

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(Accused, Exhibit F.)

UNITED STATES MILITARY TELEGRAPH,
From near Morrisville. (Received ——— 25, 1862—11.45 a. m.

General BURNSIDE:

I find that last night Pope's cavalry was withdrawn by order, and Kelly's Ford abandoned, without any notice to my command or the

cavalry picketing the river. No enemy seen on opposite side of river, except what was moving up toward Sulphur Springs. A good ford about 3 miles above railroad bridge. Kearny is at Warrenton Station, picketing to Bealeton. No pickets extending from Pope's this way, and no efforts made to keep up communication. The removal of his cavalry diminishes the means. Morell is near Morrisville, with Griffin at Barnett's. Sykes 2 miles to the rear, with Warren at Barnett's, to take Griffin's place when he goes to Kelly's. I shall go to Barnett's, then Kelly's, and on return give such intelligence as I can gain. Water is very scarce on the road; insufficient for large commands. Regiments have 40 rounds, 2 wagons each; brigade headquarters, 1; division headquarters, 2. Will give full report on return. Four companies of Rhode Island cavalry at Rappahannock Station last night. Telegraph advances very slowly, too slowly. More picks are said to be wanted, and wire.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit G.)

UNITED STATES MILITARY TELEGRAPH,
From Advance, 3.30. (Received August 25, 1862.)

General BURNSIDE:

Dispatch of 10.30 received. General Halleck is misinformed in regard to Reno's location; he is not at Kelly's Ford, nor can I hear of him. No one but four companies of R. I. cavalry are at Rappahannock Station—at Bealeton. This was the last information received. Have sent to Bealeton to get information, and shall start Sykes at daybreak for Rappahannock Station or its vicinity. The Sixth New York occupy Barnett's, and are on opposite bank. I think they can hold and watch that point with the addition of a Dutch battery; but if there is a battalion of infantry available, without breaking a brigade, I think it well to put it there to-morrow. Shall leave Griffin there. Reynolds has gone, and, like Reno, is beyond reach. This portion of my corps would have been one day farther forward had I had any information of Pope's forces or the enemy.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit H.)

UNITED STATES MILITARY TELEGRAPH,
From Advance. (Received August 27, 1862.)

General BURNSIDE:

I am ordered to move direct to Warrenton Junction, and to push the command at Barnett's, &c. The enemy have struck with their cavalry the railroad near Manassas. I expect to be out of reach of you, and you must keep back trains, &c. If you can push up ambulances, I want them much. Your animals will have to rely on grassing; there is no grain.

F. J. PORTER,
Major-General.

(Accused, Exhibit I.)

UNITED STATES MILITARY TELEGRAPH,
From Bealeton, via Washington. (Received August 26, 1862.)

General BURNSIDE:

Sykes is within 3 miles of this, in camp, and will be up to-morrow to relieve Kearny. Reading the dispatch of last night, I expected to find Banks and Reno here. I consider the fords below perfectly safe with much less force; but for future movements, think they should remain.

Sykes will get provisions and grain here. His wagons can come up with ammunition and medical supplies.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit K.)

UNITED STATES MILITARY TELEGRAPH,
From Advance, 5. (Received August 26, 1862.)

General PARKE:

I dispatched you from Bealeton, under the impression that Sykes was 3 miles off. I went to Barnett's. All is well at the first two. Griffin is at first. Morell, with two divisions, at the second. I have decided to post Sykes at Bealeton, and picket with strength from infantry and artillery Rappahannock Station, and patrol with cavalry. The Rappahannock is fordable everywhere; and if the enemy desired to cross, he would do so with a larger force than I have. Camp, for want of water, cannot be found nearer, except within gunshot. I have sent back cavalry as fast as I could, and ordered them from the divisions, and directed Morell to use those at the fords. This I did before receiving your telegram. The 150 cavalry will be a good thing. Send grain. Provisions can be brought to Bealeton from Warrenton. Please send up the wagons and ambulances, and have the drivers directed to pick up sick in house about 9 miles from Bealeton, on right-hand side, and bring them here. The supply train must go to Barnett's and Kelly's Fords; ambulances, also, which belong to Morell's. Please have sent up to-morrow an operator and instrument for Bealeton, to work the other lines; also the corps mail.

F. J. PORTER.

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(Accused, Exhibit L.)

HEADQUARTERS FIFTH ARMY CORPS,
August 23, 1862. (Received 10.30 a. m., August 23.)

General MORELL:

Dispatch received. Move on at once to Kelly's Ford, and occupy and hold it. Relieve Griffin when Sykes gets up to him. If you are called upon to go to Rappahannock Station, move up to the support of the army there. Your artillery is on the road to you. Sykes will move up this morning and relieve Griffin.

F. J. PORTER,
Major General.

(Accused, Exhibit M.)

2 P. M.

Generals MORELL and SYKES:

Push a scout to Rappahannock Station, and find out if Pope has the pickets near there, and gain information of Pope or the enemy. Pope attacked the enemy yesterday near Sulphur Springs, and the latter retreated; he was to renew the attack to-day, and it is probable Pope was pushing after him. Know the river at Rappahannock was not fordable. General Halleck's orders are for us to hold the Rappahannock. Your artillery is *en route;* also Sykes'. You will, therefore, carry out your former instructions. Re-enforcements will push up to you. All goes right.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit N.)

FALMOUTH, *August* 24.
(Received 8.30 a. m., August 25.)

Generals MORELL and SYKES:

Keep your commands well on hand for any emergency, and, before advancing another step, *do your utmost* to ascertain the positions of Pope's forces and where the enemy is. What force is at Kelly's Ford? Has the enemy been seen on the opposite bank? Give me all the information you have, and the location of your forces, and amount of cavalry at the ford. There is no more cavalry here to send you. If you can push scouts over the ford, do so as far as possible. What is the latest information? Send your dispatches so that General Sykes can see them. Direct Griffin to fix the ground or woods at Barnett's so that a small force, with artillery, can hold it. I am just informed that Pope is on the Rappahannock, at Warrenton Springs, having attacked and whipped the enemy. I wish to hold Kelly's Ford to-morrow, and hope, by the time I join you, that you will be able to inform me what is at and opposite Rappahannock Station.

F. J. PORTER,
Major-General.

—

(Accused, Exhibit O.)

ASSISTANT QUARTERMASTER'S OFFICE,
Fort Monroe, Va., August 20—11 a. m.

Maj. Gen. F. J. PORTER,
Commanding Fifth Corps, Newport News:

Please push off your troops without one moment's delay. The necessity is very pressing—a matter of life and death. What progress is made, and when will you be through? See me before you sail.

GEO. B. McCLELLAN,
Major-General.

[Confidential.]

SEPTEMBER 1—8.35 p. m.

General GEORGE B. MCCLELLAN, *Washington:*

The following has just been sent in by General Porter.

S. WILLIAMS,
Assistant Adjutant-General.

Official copy.

WM. P. MASON, JR.,
Captain and Aide-de-Camp.

[Received September 1—8.50 p. m.]

General MCCLELLAN, *near Alexandria, Va.:*

Bayard reports the enemy pouring in on the Chantilly road, and my pickets that they are coming down the Little River turnpike. Twelve brass guns were seen, and infantry and cavalry. I can see the dust and flags; columns evidently moving directly north; evidently toward Leesburg. If you can, I hope you will protect the fords into Maryland, and guard the railroad to Baltimore. I think we will have a fight before night. The enemy are between us and Fairfax Court-House, and shelled our trains last night. We will fight, or they will avoid us and strike our rear first. We have been held on to thirty-six hours too long, and are bound to work our way to Alexandria. I only regret that we have not been distributed to forts, and to the fords over the Potomac into Maryland. God speed your operations, and enable you and others in authority to save our country!

Yours,

F. J. PORTER,
Brigadier [Major] General, Commanding.

Official copy.

WM. P. MASON, JR.,
Captain and Aide-de-Camp.

—

UNITED STATES MILITARY TELEGRAPH,
War Department, August 30, 1862.
(Received, 3 p. m.)

Received in cipher.

No. 66.] HEADQUARTERS FIELD OF BATTLE,
Near Groveton, Va., August 30, 1862—5 a. m.

Maj. Gen. H. W. HALLECK.
General-in-Chief, U. S. Army:

We fought a terrific battle here yesterday with the combined forces of the enemy, which lasted with continuous fury from daylight until after dark, by which time the enemy was driven from the field, which we now occupy. Our troops are too much exhausted yet to push matters, though I shall do so in the course of the morning, as soon as General Fitz John Porter comes up from Manassas. The enemy is still in our front, but badly used up. We have lost not less than 8,000 men

killed and wounded, but, from the appearance of the field, the enemy lost not less than two to one. He stood strictly on the defensive, and every assault was made by ourselves. The battle was fought on the identical battle-field of Bull Run, which greatly increased the enthusiasm of the men.

The news just reaches me from the front that the enemy is retiring toward the mountains. I go forward at once to see. We have made great captures, but I am not able yet to form an idea of their extent. Our troops behaved splendidly. I think you had better send Franklin's, Cox's, and Sturgis' regiments to Centreville, as also forage and subsistence. I received a note this morning from General Franklin, written by order of General McClellan, saying that wagons and cars would be loaded and sent to Fairfax Station as soon as I would send a cavalry escort to Alexandria to bring them out. Such a request, when Alexandria is full of troops and we fighting the enemy, needs no comment. Will you have these supplies sent, without the least delay, to Centreville?

JOHN POPE,
Major-General.

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(Accused, Exhibit No. 1.)

WAR DEPARTMENT,
September 1, 1862—5.30 p. m.

Major-General PORTER,
Centreville, Commanding Sixth [*Fifth*] *Corps:*

I ask of you, for my sake, that of the country, and of the old Army of the Potomac, that you and all friends will lend the fullest and most cordial co-operation to General Pope in all the operations now going on. The distresses [destinies] of our country, the honor of our arms, are at stake, and all depends now upon the cheerful co-operation of all in the field. This week is the crisis of our fate. Say the same thing to all my friends in the Army of the Potomac, and that the last request I have to make of them is, that for their country's sake they will extend to General Pope the same support they ever have to me. I am in charge of the defenses of Washington. I am doing all I can to render your retreat safe, should that become necessary.

GEO. B. McCLELLAN,
Major-General.

—

(Accused, Exhibit No. 2.)

FAIRFAX COURT-HOUSE,
September 2, 1862—10 a. m.

General GEORGE B. McCLELLAN, *Washington:*

You may rest assured that all your friends, as well as every lover of his country, will ever give, as they have given, to General Pope their cordial co-operation and constant support in the execution of all orders and plans. Our killed, wounded, and enfeebled troops attest our devoted duty.

F. J. PORTER,
Major-General, Commanding.

(Accused, Exhibit No. 3.)

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29, 1862.

Maj. Gen. F. J. PORTER:

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious, or we will lose much.

JOHN POPE,
Major-General, Commanding.

—

(Accused, Exhibit No. 4.)

HEADQUARTERS OF THE ARMY,
Near Bull Run, August 29, 1862—3 a. m.

Major-General PORTER:

GENERAL: McDowell has intercepted the retreat of Jackson. Sigel is immediately on the right of McDowell. Kearny and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville at the first dawn of day with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

I am, general, very respectfully, your obedient servant,
GEO. D. RUGGLES,
Colonel and Chief of Staff.

BRISTOE. (Received February 29, 1862—5.30 a. m.)

—

(Accused, Exhibit No. 5.)

HEADQUARTERS, NEAR WARRENTON JUNCTION,
August 28—12.37 a. m.

Major-General PORTER, *Warrenton Junction:*

GENERAL: I have this moment received your note of the 27th instant, directing me to hasten with all speed to Warrenton Junction. My corps reached here last night at dark, and is now encamped one and a half miles south of the Warrenton Junction. Is it desired that we move forward immediately, or wait until daylight? Please answer. General Pope sends an order for two batteries of artillery to join General Heintzelman in the direction of Greenwich. They will be sent forward immediately.

Very respectfully, your obedient servant,
N. P. BANKS,
Major-General, Commanding Second Corps, Army of Virginia.

—

(Accused, Exhibit 6.)

BRISTOE, *August* 28, 1862—9.30 a. m.

General BURNSIDE,
Falmouth:

My command will soon be up, and will at once go into position. Hooker drove Ewell some 3 miles, and Pope says McDowell intercepted

Longstreet, so that, without a long detour, he cannot join Ewell, Jackson, and A. P. Hill, who are, or supposed to be, at Manassas. Ewell's train, he says, took the road to Gainesville, where McDowell is coming from. We shall be to-day as follows: I on right of railroad, Heintzelman on left, then Reno, then McDowell. He hopes to get Ewell, and to push to Manassas to-day. I hope all goes well near Washington; I think there need be no cause of fear for us. I feel as if on my own way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare, and we must make connection soon. I hope for the best, and my lucky star is always up about my birthday, the 31st. I hope Mac's is up also. You will hear of us soon by way of Alexandria.

Ever yours,

F. J. P.

—

(Exhibit No. 7.)

HEADQUARTERS FIFTH ARMY CORPS,
August 27, 1862.

Major-General MORELL,
Commanding Division:

GENERAL: The commanding general directs that you hurry up with your command. Pass through Bealeton and Fayetteville, and join the commanding general in the vicinity of Warrenton. Smead will be directed to join and report to you with his battery. When your command passes through Bealeton and Fayetteville, have your ranks well closed up, so that a good impression may be made by the appearance of our troops. Permit no straggling. After getting to Bealeton, send all your men belonging to the cavalry back to their commands. If Griffin cannot get all the way up to-day, let him stop at Bealeton. Try and keep three days' cooked rations always in the possession of your men.

Very respectfully, your obedient servant,

FRED. T. LOCKE,
Assistant Adjutant-General.

GENERAL: Lose no time in getting up. You will find me near Warrenton, and, if you send forward an officer to me, will have you located. Do all you can to get up provisions, and put as much bread in haversacks as possible; three days'. We go right to the railroad, and, with your cattle, will manage to get all that is wanted. Hurry up Griffin. Don't wait for him. Hope you are improving.

F. J. PORTER.

—

WILLARD'S HOTEL, *December* 29, 1862.

Hon. JOSEPH HOLT, *Judge-Advocate, &c.:*

SIR: I am directed by Special Orders, No. 364, Army of Potomac, December 27, 1862, to report to you as a witness in the case of Major-General Porter. I am suffering from a severe headache and symptoms of fever this morning, and shall remain, with your permission, at my room at Willard's, subject to your call. Trusting you will have no objection to this course,

I am, very respectfully, yours,

DANIEL BUTTERFIELD,
Brigadier-General.

WARRENTON JUNCTION,
August 27, [1862]—4 p. m.

General BURNSIDE, *Falmouth:*

I send you the last order from General Pope, which indicates the future as well as the present. Wagons are rolling along rapidly to the rear, as if a mighty power was propelling them. I see no cause for alarm, though I think this order may cause it. McDowell moves to Gainesville, where Sigel now is. The latter got to Buckland Bridge in time to put out the fire and kick the enemy, who is pursuing his route unmolested to the Shenandoah, or Loudoun County. The forces are Longstreet's, A. P. Hill's, Jackson's, Whiting's, Ewell's, and Anderson's (late Huger's) divisions. Longstreet is said by a deserter to be very strong. They have much artillery and long wagon trains. The raid on the railroad was near Cedar Run, and made by a regiment of infantry, two squadrons of cavalry, and a section of artillery. The place was guarded by nearly three regiments of infantry, and some cavalry. They routed the guard, captured a train and many men, destroyed the bridge, and retired leisurely down the road toward Manassas. It can be easily repaired. No troops are coming up, except new troops, that I can hear of. Sturgis is here with two regiments. Four were cut off by the raid. The positions of the troops are given in the order. No enemy in our original front. A letter of General Lee, seized when Stuart's assistant adjutant-general was taken, directs Stuart to leave a squadron only to watch in front of Hanover Junction, &c. Everything has moved up north. I find a vast difference between these troops and ours. But I suppose they were new, as they to-day burned their clothes, &c., when there was not the least cause. I hear that they are much demoralized, and needed some good troops to give them heart, and, I think, head. We are working now to get behind Bull Run, and, I presume, will be there in a few days, if strategy don't use us up. The strategy is magnificent, and tactics in the inverse proportion. I would like some of my ambulances; I would like also to be ordered to return to Fredericksburg and to push toward Hanover, or, with a larger force, to strike at Orange Court-House. I wish Sumner was at Washington, and up near the Monocacy with good batteries. I do not doubt the enemy have large amounts of supplies provided for them, and I believe they have a contempt for this Army of Virginia. I wish myself away from it, with all our old Army of the Potomac, and so do our companions. I was informed to-day by the best authority, that, in opposition to General Pope's views, this army was pushed out to save the Army of the Potomac, an army that could take the best care of itself. Pope says he long since wanted to go behind the Occoquan. I am in great need of ambulances, and the officers need medicines, which, for want of transportation, were left behind. I hear many of the sick of my corps are in houses on the road, very sick. I think there is no fear of an enemy crossing the Rappahannock. The cavalry are all in the advance of the rebel army. At Kelly's and Barnett's Fords much property was left, in consequence of the wagons going down for grain, &c. If you can push up the grain to-night, please do so, direct to this place. There is no grain here to-day, or anywhere, and this army is wretchedly supplied in that line. Pope says he never could get enough.

F. J. PORTER.

Most of this is private. But if you can get me away, please do so. Make what use of this you choose, so it does good. Don't let the alarm

here disturb you. If you had a good force you could go to Richmond. A force should at once be pushed out to Manassas to open the road. Our provisions are very short.

F. J. P.

After telegraphing, this dispatch will be sent to General Burnside.

—

HEADQUARTERS ARMY OF VIRGINIA,
Warrenton Junction, August 26, 1862—7 o'clock p. m.

Maj. Gen. F. J. PORTER, *Commanding Fifth Army Corps:*

GENERAL: Please move forward with Sykes' division to-morrow morning through Fayetteville, to a point within two and a half miles of the town of Warrenton, and take position where you can easily move to the front, with your right resting on the railroad. Call up Morell to join you as speedily as possible, leaving only small cavalry forces to watch the fords. If there are any troops below, coming up, they should come up rapidly, leaving only a small rear guard at Rappahannock Station. You will find General Banks at Fayetteville. I append below the position of our forces, as also those of the enemy. I do not see how a general engagement can be postponed more than a day or two.

McDowell, with his own corps, Sigel's, and three brigades of Reynolds', numbering about 34,000, are at and immediately in front of Warrenton. Reno joins him on his right and rear, with 8,000 men, at an early hour to-morrow. Cox, with 7,000 men, will move forward to join him in the afternoon of to-morrow. Banks, with 6,000, is at Fayetteville. Sturgis, about 8,000 strong, will move forward by day after to-morrow. Franklin, I hope, with his corps, will, by day after to-morrow night, occupy the point where the Manassas Gap Railroad intersects the turnpike from Warrenton to Washington City. Heintzelman's corps will be held in reserve here at Warrenton Junction until it is ascertained that the enemy has begun to cross Hedgeman's River. You will understand how necessary it is for our forces to be in position as soon as possible. The enemy's lines extend from a point a little east of Warrenton Sulphur Springs around to a point a few miles north of the turnpike from Sperryville to Warrenton, with his front presented to the east, and his trains thrown around well behind him in the direction of Little Washington and Sperryville. Make your men cook three days' rations, and keep at least two days' cooked rations constantly on hand. Hurry up Morell as rapidly as possible, as also the troops coming up in his rear. The enemy has a strong column still farther to his left, toward the Manassas Gap Railroad, in the direction of Salem.

JOHN POPE,
Major-General, Commanding.

—

General MORELL:

Put your men in position to remain during the night, and have out your pickets; put them so that they will be in line, and, on rising, will be in position to resist anything. I am about a mile from you. McDowell says all goes well, and we are getting the best of the fight. I wish you would send me a dozen men from the cavalry.

F. J. PORTER,
Major-General.

Keep me informed. Troops are passing up to Gainesville, pushing the enemy. Ricketts has gone; also King.

[Received a few minutes before daybreak, August 30, 1862.]

[Important.]

General MORELL:

Lose not a moment in withdrawing and coming down the road to me. The wagons which went up send down at once, and have the road cleared, and send me word when you have all in motion. Your command must follow Sykes.

F. J. P.

—

General MORELL:

I wish you to push up two regiments, supported by two others, preceded by skirmishers, the regiments at intervals of 200 yards, and attack the party, with the section of a battery, opposed to you. The battle works well on our right, and the enemy are said to be retiring up the pike. Give the enemy a good shelling when our troops advance.

F. J. PORTER,
Major-General.

—

HEADQUARTERS ARMY OF VIRGINIA,
Warrenton Junction, August 27, 1862—4 o'clock a. m.

Maj. Gen. F. J. PORTER,
Commanding Fifth Army Corps:

GENERAL: Your note of 11 p. m. yesterday is received. Major-General Pope directs me to say that under the circumstances stated by you in relation to your command, he desires you to march *direct to this place* as rapidly as possible. The troops behind you at Barnett's Ford will be directed by you to march at once direct to this place, or Weaversville, without going to Rappahannock Station. Forage is hard to get, and you must graze your animals as far as you can do so. The enemy's cavalry has intercepted our railway communication near Manassas, and he seems to be advancing with a heavy force along the Manassas Gap Railroad. We will probably move to attack him to-morrow in the neighborhood of Gainesville, which may bring our line farther back toward Washington. Of this I will endeavor to notify you in time. You should get here as early in the day to-morrow as possible, in order to render assistance, should it be needed.

I am, general, very respectfully, your obedient servant,

GEO. D. RUGGLES,
Colonel and Chief of Staff.

—

CENTREVILLE, *August* 30, 1862.

MY DEAR GENERAL: I send you copies of some orders under which I have moved lately. I advanced in *pursuit* of the enemy, and struck the center of his line, especially under the direction of General Lee, and was whipped, as was the whole army, badly; that is, it was overpowered. Two of Morell's brigades were in action under Butterfield, and two of Sykes' (Buchanan and Chapman), and they did nobly. The latter lost by volunteers firing into them before passing through them. They were not sustained on the right, and had to retire. The Pennsylvania Reserves did beautifully. They show the advantage of being well led by Reynolds, Meade, Seymour, and Jackson. A battery was lost and retaken by them, but again lost after gallant resistance. Warren has only 187 men left, not one missing, and only three commissioned

officers. We were driven from the field, and here we are, after marching all last night, strongly located in a position which, if the enemy shells, will cause slaughter; but I do not believe he will attack, but get in our rear, and compel us to attack him in a well-selected place. The men are without heart, but will fight when cornered. To-day General Pope asked the question of the Government if arrangements had been made to protect Washington in case this army met with a disaster. He said to us, chief of corps present, when the reply was received, that he was glad the Government had decided the question for him, but we were to fight wherever the enemy was, meaning we were not to return to Alexandria, &c., as all forces were coming to us. I believe the decision was a general disappointment, except to him. However, we obey, and do what Halleck thinks is best. Pope says there are political considerations which control, not the safety of the army; but our men will not fight with heart when they know, if wounded (as we cannot retain the field against present odds), they are to be left to the care of the enemy. Pope sent in a flag to-day to get our wounded. I have many officers in their hands, some of the most valuable, from every State. Our wagons are gone, and our artillery and cavalry will not soon be movable. The latter is broken down, and, as Pope says, he has no *cavalry* though he has *regiments*. We have taken very few prisoners (some 400). In return, we have left all our killed and the most of our wounded in their hands. The enemy got one battery of six pieces yesterday; I believe belonged to Reynolds. The enemy took Manassas, one battery, and left one piece (iron) spiked and useless. It was left on the ground when we abandoned Manassas. I hear it is claimed we captured it.

We are bivouacking, and, as I have had no dinner or supper to-day, and no chance of any to-morrow, I will bid you good-by, in the hope of soon seeing you (without being whipped), and that you have plenty to eat. If we return, I hope the forces will be directed to take different roads to the forts, and they will be well manned and protected by us. I do not wish to see the army back, if it can be helped; but I fear it may be kept here at the will (?) of the enemy to cripple it, so that when it does get back it will be so crippled that it cannot defend the forts against the powerful ——— of the enemy, who will hold it here while they cross into Maryland. I may be in error as [to] their purpose.

Lee is here; Jackson is not now here. Cadmus [M.] Wilcox commands Hill's division, directly in front, and the enemy are massing to turn us. I expect to hear hourly of our rear being cut, and our supplies and trains (scarcely guarded) at Fairfax Station being destroyed, as we are required to stay here and fight. I am glad Couch is coming up on the road. Hope we will have the fight before he gets here, as so much will be saved for another day. I understand the Secretary of the Interior sent out some men to take care of our wounded, and they were much surprised to find they were in the hands of the enemy. They return with a different impression from what they came. Good-night. The bearer will tell you much.

F. J. PORTER,
Major-General.

I certify that the above is a true copy of a dispatch received by me on the morning of September 1, 1862, by the hands of Lieutenant Monteith, aide-de-camp to Maj. Gen. F. J. Porter.

GEO. B. McCLELLAN,
Major-General, U. S. Army.

Consolidated morning report of Morell's division, Fifth Army Corps, commanded by Brig. Gen. G. W. Morell.

MORELL'S DIVISION,
Camp near Miner's Hill, September 5, 1862.

Number of companies	24
Present for duty:	
General officer	1
General staff officers	3
Field officers	3
Regimental and battalion staff officers	7
Company officers	51
Total commissioned	65
Enlisted men	1,471
Sick:	
Commissioned officer	1
Enlisted men	28
In arrest or confinement:	
Enlisted men	4
Aggregate	1,569
Absent by authority:	
Commissioned officers	24
Enlisted men	455
Absent without authority:	
Enlisted men	34
Present and absent:	
Commissioned officers	90
Enlisted men	1,992
	2,082

G. W. MORELL,
Major-General.

FRANCIS S. EARLE,
Acting Assistant Adjutant-General.

Extract from consolidated report of Morell's division.
Correct.

FRED. T. LOCKE,
Lieutenant-Colonel and Assistant Adjutant-General, Fifth Army Corps.

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UNITED STATES MILITARY TELEGRAPH,
From Advance, 11.45 p. m. (Received August 27, 1862.)

Major-General BURNSIDE:

Have just received orders from General Pope to move Sykes to-morrow to within 2 miles of Warrenton, and to call up more to same point, leaving the fords guarded by the cavalry. He says the troops in rear should be brought up as rapidly as possible, leaving only a small rear guard at Rappahannock Station, and that he cannot see how a general engagement can be put off more than a day or two. I shall move up as ordered, but the want of grain, and the necessity of receiving a supply of subsistence, will cause some delay. Please hasten back the wagons sent down, and inform McClellan, that I may know that I am doing right. Banks is at Fayetteville; McDowell, Sigel, and Ricketts

at and immediately in front of Warrenton; Reno on his right; Cox joins to-morrow, Sturgis next day, and Franklin is expected. So says General Pope.

F. J. PORTER,
Major-General.

—

Generals McDOWELL and KING:

I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and as they appear to have driven our forces back—the firing of the enemy having advanced and ours retired—I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going. Had you not better send your train back?

F. J. PORTER,
Major-General.

And will communicate with you.

—

GENERAL ORDERS, } HEADQUARTERS ARMY OF VIRGINIA,
No. —. } *Warrenton Junction, August* 27, 1862.

The following movement of troops will be made, viz:

Major-General McDowell, with his own and Sigel's corps, and the division of Brigadier-General Reynolds, will pursue the turnpike from Warrenton to Gainesville, so as to reach Gainesville, if possible, to-night. The army corps of General Heintzelman, with the detachment of the Ninth Corps, under Major-General Reno (General Reno leading), will take the road from Catlett's Station to Greenwich, so as to reach there to-night or early in the morning. Major-General Reno will immediately communicate with Major-General McDowell; and his command, as well as that of Major-General Heintzelman, will support Major-General McDowell in any operations against the enemy.

Maj. Gen. Fitz John Porter will remain at Warrenton Junction till he is relieved by Major-General Banks, when he will immediately push forward with his corps in the direction of Greenwich and Gainesville, to assist the operations on the right wing. Major-General Banks, as soon as he arrives at Warrenton Junction, will assume the charge of the trains, and cover their movement toward Manassas Junction. The train of his own corps, under escort of two regiments of infantry and a battery of artillery, will pursue the road south of the railroad which conducts into the rear of Manassas Junction. As soon as all the trains have passed Warrenton Junction, he will take post behind Cedar Run, covering the fords and bridges of that stream, and holding his position as long as possible. He will cause all the railroad trains to be loaded with the public and private stores now here, and run them back toward Manassas Junction as far as the railroad is practicable. Wherever a bridge is burned so as to prevent the farther passage of the railroad trains, he will assemble them all as near together as possible, and protect them with his command until the bridges are rebuilt. If the enemy is too strong before him before the bridges can be repaired, he will be careful to destroy entirely the trains, locomotives, and stores before he

falls back in the direction of Manassas Junction. He is, however, to understand that he is to defend his position as long as possible, keeping himself in constant communication with Major-General Porter on his right. If any sick now in hospital at Warrenton Junction are not provided for, and able to be transported, he will have them loaded into the wagon train of his own corps (even should this necessitate the destruction of much baggage and regimental property), and carried to Manassas Junction. The very important duty devolved upon Major-General Banks the major-general commanding the Army of Virginia feels assured that he will discharge with intelligence, courage, and fidelity. The general's headquarters will be with the corps of Major-General Heintzelman until further notice.

By command of Major-General Pope:

GEO. D. RUGGLES,
Colonel and Chief of Staff.

—

FALMOUTH, *August* 29, 1862—1 p. m.
(Received 1 p. m.—Cipher.)

Maj. Gen. H. W. HALLECK,
General-in-Chief, and
Maj. Gen. GEORGE B. MCCLELLAN,
Alexandria:

The following just received from Porter, 4 miles from Manassas, the 28th, 2 p. m.:

All that talk of bagging Jackson, &c., was bosh. That enormous gap—Manassas—was left open, and the enemy jumped through, and the story of McDowell having cut off Longstreet had no good foundation. The enemy have destroyed all our bridges, burned trains, &c., and made this army rush back to look at its line of communication, and find us bare of subsistence. We are far from Alexandria, considering the means of transportation. Your supply train of 40 wagons is here, but I can't find them. There is a report that Jackson is at Centreville, which you can believe or not. The enemy destroyed an immense amount of property at Manassas—cars and supplies. I expect the next thing will be a raid on our rear by way of Warrenton by Longstreet, *who was cut off.*

F. J. PORTER,
Major-General.

This is the latest news.

A. E. BURNSIDE,
Major-General.

—

FALMOUTH, VA., 29*th*—5¼ p. m.
(Received 5.30 p. m., August 29, 1862.)

General H. W. HALLECK,
General-in-Chief:

The following message has just been received:

BRISTOE, 29*th*—6 a. m.

General BURNSIDE:

Shall be off in half an hour. The messenger who brought this says the enemy had been at Centreville, and pickets were found there last night.

Sigel had severe fight last night; took many prisoners. Banks is at Warrenton Junction; McDowell near Gainesville; Heintzelman and Reno at Centreville, where they marched yesterday. Pope went to Centreville with the last two as a body guard, at the time not knowing where was the enemy, and where Sigel was fighting—within 8 miles of him and in sight. Comment is unnecessary.

The enormous trains are still rolling on. Many arrivals [animals] not having been watched [watered] for fifty hours, I shall be out of provisions to-morrow night. Your

train of 40 wagons cannot be found. I hope Mac's at work, and we will soon get ordered out of this. It would seem, from proper statement of the enemy, that he was wandering around loose, but I expect they know what they are doing, which is more than anyone here or anywhere knows.

Just received the following order:

HEADQUARTERS ARMY OF VIRGINIA,
Near Bull Run, August 29, 1862.

Major-General PORTER:

General McDowell has anticipated [intercepted] the retreat of Jackson. Sigel is immediately on the right of McDowell. Kearny and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville at the first dawn of day with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

GEO. D. RUGGLES,
Colonel &c.

[F. J. PORTER.]

6.15 P. M.

A large body of enemy reported opposite. I am preparing, and will hold the place until the last. The only fear I have is, a force coming from Manassas Junction.

A. E. BURNSIDE,
Major-General.

—

No. 1.

SPECIAL ORDERS, No. 362.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, November 25, 1862.

* * * * * * *

III. The military commission ordered to assemble on the 20th instant by Special Orders, No. 350, November 17, 1862, from Headquarters of the Army, is hereby dissolved, and a general court-martial is hereby appointed, to meet in this city on the 27th instant, or as soon thereafter as practicable, for the trial of Maj. Gen. Fitz John Porter, U. S. Volunteers.

Detail for the court.

Maj. Gen. D. Hunter, U. S. Volunteers.
Maj. Gen. E. A. Hitchcock, U. S. Volunteers.
Brig. Gen. Rufus King, U. S. Volunteers.
Brig. Gen. B. M. Prentiss, U. S. Volunteers.
Brig. Gen. James B. Ricketts, U. S. Volunteers.
Brig. Gen. Silas Casey, U. S. Volunteers.
Brig. Gen. James A. Garfield, U. S. Volunteers.
Brig. Gen. N. B. Buford, U. S. Volunteers.
Bvt. Brig. Gen. W. W. Morris, U. S. Volunteers.

Col. J. Holt, Judge-Advocate-General U. S. Army, judge-advocate and recorder of the court.

No other officers than those named can be assembled without manifest injury to the service.

By command of Major-General Halleck:

E. D. TOWNSEND,
Assistant Adjutant General.

Hon. J. HOLT,
Judge-Advocate-General.

No. 2.

SPECIAL ORDERS, } HEADQUARTERS OF THE ARMY,
No. 364. } ADJUTANT-GENERAL'S OFFICE,
Washington, November 26, 1862.

* * * * * * *

V. Brig. Gen. J. P. Slough, U. S. Volunteers, is hereby detailed a member of the general court-martial ordered to assemble on the 27th instant, by Special Orders, No. 362, November 25, 1862, from the Headquarters of the Army, or as soon thereafter as practicable, for the trial of Maj. Gen. Fitz John Porter, U. S. Volunteers; and Bvt. Brig. Gen. W. W. Morris, U. S. Army, is hereby relieved from the operation of said order.

By command of Major-General Halleck:

E. D. TOWNSEND,
Assistant Adjutant-General.

JUDGE-ADVOCATE-GENERAL, U. S. ARMY.

—

No. 3.

WASHINGTON CITY, *December* 2, 1862.

Maj. Gen. D. HUNTER,
President of General Court-Martial, Washington, D. C.:

GENERAL: I respectfully ask of the court, through you, that its proceedings may be open, not merely to the public, but also to the press.

Accusations of a most serious character are laid against me. They extend over a short period, embracing important operations, and are connected with whatever of success or disaster has attended some of those operations. The impression has gone forth that I am, in a degree, responsible for the latter, and I am charged with preventing success. My character has been assailed, through the public press, with charges of "doubtful loyalty," and my name stained with such epithets as "traitor" or "semi-traitor."

If the testimony elicited by this court sustains the allegations, I alone am the sufferer by the publicity. If my innocence be proved after the impartial investigation which I am confident this honorable body will require, let my countrymen be convinced that the confidence reposed in me was not misplaced, and that by this investigation the Government designs to do justice to our country and to those engaged in fighting her battles.

I am, very respectfully, your obedient servant,

F. J. PORTER,
Major-General.

DECEMBER 3, 1862.

P. S.—I see, to-day, published in the morning papers, the report of the General-in-Chief, in which he comments on some of the matter for investigation before this court. The presentation of that matter at the present, while my trial is going on, is apt to prejudice the public mind, and I ask, therefore, that this application be granted. I the more urge this, as the General-in-Chief refrains, he says, from commenting on matter of complaint against General Buell, because his trial is progressing.

F. J. PORTER,
Major-General.

No. 5.*

WASHINGTON, D. C., *December* 3, 1862.

There is a question of form, possibly involving important matter of law, to which I now, upon my own reflections and the advice of my counsel, deem it proper respectfully to ask the consideration of the court.

The charges and specifications furnished to me are signed by B. S. Roberts, brigadier-general of volunteers and inspector-general of Pope's army. The order convening a military commission in my case recited that the subject-matter of its investigation was charges preferred against me by Maj. Gen. John Pope.

I desire to be informed whether, under these circumstances, the charges before this court, signed, as above stated, by an officer of General Pope's staff, whose official character as such appears as part of his signature, be, or be not, in the judgment of the court, in contemplation of law, charges preferred by Major-General Pope, or by his order, so as to make the presentation of them his act. Should the court hold this to be the legal fact, then, as the court is aware, the order convening this court is not legal, in view of the provision of the statute of 1830, which requires the court in such a case to be convened by the President of the United States, and not, as this court is convened, by order of the General-in-Chief.

The determination of this question now may prevent embarrassment and delay hereafter, and in that view solely I now present it, and not with the slightest purpose of taking any exception to any member of the court.

F. J. PORTER,
Major-General.

No. 6.

The witness having, in his examination-in-chief, attributed the disasters of the army under his command in Virginia, in August last, to the failure of the accused to obey all or some of his orders, and having stated that he was of the opinion that such orders might have been obeyed, and it being, so far as the prosecution has gone, upon his evidence that such disobedience occurred that the prosecution has endeavored to be maintained, the accused is advised by his counsel that the question just ruled out by the court is not only relevant and legal, but most material, in order to show that the recollection of the witness in such his examination-in-chief is not to be relied upon, and that he for the first time afterward charged the alleged disobedience upon the accused, because it was the duty of the witness not only not to doubt whether he would take any action in relation to the matter, but to report the same as a grave offense on the part of the accused; and his determination or doubt whether he would take such action and make such report are facts not only admissible, but material evidence that at the time to which the question relates he did not believe there had been any such disobedience on the part of the accused; and, therefore, respectfully requests to have this protest entered on the proceedings of the court against the exclusion of the question referred to.

F. J. PORTER,
Major-General.

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*No. 4, being copy of charges and specifications printed on pp. 824–827, is here omitted.

The witness here requested the permission of the court to answer the question referred to in the protest just read. The accused made no objections. Whereupon the court was cleared, and decided to grant the request of the witness.

Court opened, &c.

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WASHINGTON, D. C., *December* 26, 1862.

With all proper respect for the ruling of the court on Wednesday, refusing the accused the right to give in evidence the telegrams and messages he then offered, dated before and after the 29th of August (that is to say, from August 22 to September 1, 1862), he begs leave to enter on its proceedings this protest.

The accused is charged, amongst other things, with having disobeyed the several orders stated in the specifications of the 27th August, 1862, 29th August, 1862 (4.30 p. m.), and 29th August, 1862 (8.50 p. m.), and the prosecution has endeavored to prove that such disobedience was by design, because of a fixed purpose on the part of the accused not only not to co-operate with the general in command in the existing campaign, but to fail in his duty in that regard.

With this view, certain papers, being a part of the same series of telegrams with those rejected, were offered by the judge-advocate, not objected to by the accused, when the purpose for which they were offered was stated, and received by the court.

And with the same object, the opinions of the witnesses Roberts and Smith, founded, as they said, on what they represent to be the manner and conversation of the accused, and also on what the first said he heard from another, that the accused would fail the commander-in-chief.

In the words of the judge-advocate, this evidence was produced to show the *animus* of the accused toward his chief, and in that aspect was admitted by the court. The accused respectfully maintains that if evidence of that description, for such a purpose, be admissible (as he concedes it is), it is equally admissible, and is his right, to show by his conduct just before, at, and after he came [under] the command of General Pope, by what he did and by what he said, orally or in writing, that the asserted purpose—the alleged *animus*—is wholly untrue; but that, on the contrary, his real purpose—his real *animus*—from the first to the last, was to do his whole duty to the utmost of his ability, and render his general and his country all the aid in his power.

If the prosecution had contented itself with exhibiting the orders in the specifications which he is said to have disobeyed, and in giving evidence of the fact of disobedience, the accused is advised that, even then, the proof which the court has ruled out should have been received. But when, not content with that course, it has attempted to prove his mental purpose—to fathom his mind—to show that from personal grudge to his general, or other cause, he designedly disobeyed such orders, he is advised that the evidence rejected is clearly admissible.

The general rules of evidence are the same in courts-martial as in other courts. They are based on principles of universal application, and which, as experience has demonstrated, are best calculated to ascertain the truth. One of these, as well settled as any known to the law, is, that where a mental intent with which an act is done is in issue, the acts and declarations of the party a few days before, at, or a few days after the time when the intent is charged to have existed, bearing on such intent, may be given in evidence by either party. This is a

familiar rule in cases, amongst others, of acts of alleged bankruptcy or insolvency, of change of residence, and of many acts of alleged fraud.

In the first, whether the act charged as an act of bankruptcy is one or not, often depends on the intent with which it is done; and what the party did before or after, is constantly admitted as legitimately illustrating the actual intent.

In the second, whether a man has changed his residence often, also depends on intent. He may have removed, to remain permanently or temporarily; and what he has done or said before and after removing, is allowed to prove or disprove intent.

In the third, whether the imputed fraud was perpetrated or not, often depends on intent. Unexplained, the mere act itself may appear criminal or innocent. It is the purpose which gives it its actual character, and this purpose may be shown by either party—by acts and declarations of the person charged before and after the period of the impeached act. This principle, I am advised, is fully settled, not only in all the elementary writers on evidence, but by the Supreme Court of the United States in, amongst other cases, that of Wood *vs.* United States (16 Peters, 362).

And it is respectfully hoped that the court will, on further consideration, see the justice of the rule. Its justice is strikingly illustrated in this instance: The accused is charged with the dishonorable, traitorous purpose of having disregarded the orders of his chief, to gratify some supposed personal dissatisfaction with him, wholly reckless of its consequences to his country. He is charged with having caused the defeat of our arms, and hazarded the safety of the capital, under the same degrading impulse. One of the witnesses has sworn, without objection from the judge-advocate or the court, that a deceased officer, of chivalrous character and spotless patriotism, had declared to him, before the date of either of the orders, that the accused would fail his chief. Another has stated, also without objection, that his conduct and manner in his presence were such that he was satisfied that he was a traitor, and that nothing but the fear of human laws prevented his killing the accused on the spot. This evidence was offered and received to show his *animus*—his intent. Proudly conscious of his innocence, and knowing the baseness of the calumny, he did not object to its introduction, being perfectly willing to let it all go for what it is worth. But to deny him the right, after it is received by the court, to meet it by proving what is wholly inconsistent with it—acts of duty about the same period, orders, and messages, having no possible purpose but a faithful discharge of duty to his chief and his country—it is submitted is a violation of the rule of evidence, and is to deprive him of the very best and most persuasive proof that the nature of the accusation admits of.

To show that he was not a traitor, he desired to establish constant acts of duty immediately preceding and succeeding the acts which he is charged to have done traitorously. To show faithfulness to duty to his chief, he desires to prove, as the rejected evidence does, that to get to his command, and after he reached it, he did everything that diligence, zeal, ardor, and all the skill and ability which he possessed enabled him to do to assist his chief in every possible way and at every possible hazard, so as to render his campaign a successful one.

Your ruling puts this out of his power, and, respectfully protesting against it, he can do nothing further than to submit it to your more mature consideration.

F. J. PORTER,
Major-General.

DEFENSE OF THE ACCUSED.

Mr. PRESIDENT AND GENTLEMEN: I stand before you, I trust, as a man who, up to the 27th of August last, was and desired to be of fair name and fame; a soldier held to be faithful, laborious, loyal, and trustworthy; prompt to honorable duty though involving personal peril, and having done some service which my country and my Government had seen fit generally to regard and to reward as meritorious.

Eminent and honorable men, fit in every way to be heard with respect, have come here before you, within the past few days, to bear upon their knowledge and their oath at least thus much of witness in my behalf and praise.

Nor do I for a moment doubt that their words, so spoken, carried with them your belief. But in some sense such words were not needed to attest to you what I have been and what I was up to those two days of my life in August last, which this wicked accusation would have blackened if I had not crushed down its falsehood by my defense, even as you will, I do not doubt, in your finding, crush down its malice.

Yet a little while ago my companions in arms were taking counsel together as my judges. Yourselves, most if not all of you, have known me well. Your eminent official law adviser, who has conducted this prosecution calmly and fairly so far as on him depended, but with the vigilance and energy which his duty demanded, himself in the recent past, when momentous events hinged on the great sway which in his high post he bore, has trusted me, and has felt that his trust was in nowise betrayed.

But no more of this. I go on at once to answer these charges as they stand.

The order set forth in the first specification to the first charge bears upon its face a plain purpose and meaning. It commanded me to hasten forward as soon as possible from Warrenton Junction to Bristoe Station, in order to be ready there as early as practicable, to co-operate with my force against the enemy. Receiving this order about 10 o'clock at night, I proceeded at once to carry it into execution, to the best of my ability. It had been written by General Pope 10 miles away from me, about three and a half hours before I received it, and at too early an hour for him to know the character of the night which was coming on. The order itself proves that he did not know, when he wrote it, whether General Morell's division had yet joined me. He could, of course, know nothing of the condition of my troops, of the distance which they had marched that day, nor of their capacity to commence another march of 10 miles without any considerable interval of rest and without any delay. Still less could he know whether, when the order reached me, the roads were or were not so much obstructed as to be impracticable for masses of troops in the darkness. All these facts were fully before me and the general officers of my corps, with whom I at once consulted as to the best mode of its execution. It is abundantly in proof that their opinion was unanimous that nothing could be gained, and that much must be lost, by an attempt to start at 1 o'clock in the night. In their testimony, General Morell, General Sykes, and General Butterfield have clearly set forth the grounds upon which they arrived at that conclusion. General Butterfield testifies expressly that I was reluctant to adopt it; and in this he is confirmed, so far as they speak to the point, by the whole testimony of the other generals. It is in proof that, immediately upon the receipt of the order, I sent out two officers of my staff to ascertain, if they could, in the

thick darkness, the state of the road, and the extent to which it was obstructed, and that I waited for their most unfavorable report before I decided, in concurrence with the other generals, so far to depart from the strict letter of the order as to fix the hour of marching at 3 o'clock, with express order that all preparations for the movement should be before that hour completed. It is fully in evidence that this course was not adopted by me until I had myself gone forth from my tent to see whether anything better to accomplish the object of the order could possibly be done.

Such having been indisputably my conduct under the order, the only question before the court is, whether that conduct was criminal. That I was laboring to the best of my ability and judgment, in the whole transaction, to carry out the order fully, cannot be questioned. Did the event bear out the correctness of the judgment I then formed as to the best mode of executing the order? I submit to the court that every witness who has testified upon this point from actual knowledge and observation fully proves that to have started, as the order directed, at 1 o'clock, instead of starting, as I did start, at 3 o'clock, would have been, first, really to lose time in arriving at Bristoe Station, and also greatly to impair the strength and efficiency of my troops at the time of their arrival. Besides the three general officers to whom I have referred, and each of whom necessarily knew the whole state of things, General Griffin also testifies expressly to this fact. He informs the court that even at 3 o'clock, when he did move, it was so dark, and such was the state of the road, that the troops fell into confusion; and although every effort was made to get along, the column was forced to come to a halt and wait for the daylight before the artillery could be extricated from the marshy ground in which it had stuck fast.

I now proceed to make such citations from the testimony before the court as will fully establish all that I have stated. General Butterfield says:

> The order, I believe, was for General Porter to move his force at 1 o'clock in the morning to Bristoe Station. He handed the order to General Morell and to General Sykes, who were present, and said that was a chance for a short nap, or something of that sort—I do not remember the exact words—indicating that there was but little time for preparation. General Sykes or General Morell, I do not remember which—one or both of them—spoke with regard to the fatigue our troops had endured, the darkness of the night, and the fact that, in their judgment, the troops could be of more service to start at a later hour than they could be to start at the hour named. In reply to their remark, General Porter spoke rather decidedly; that there was the order; it must be obeyed; that those who gave the order knew whether the necessity of the case would warrant the exertions that had to be made to comply with it. I do not state that as his exact words, but as the substance of what he said. Captain DeKay, who brought the order, was then present, and was asked some questions about the road. He stated that the road was full of teams. General Sykes, I think, suggested that it would be impossible for us to move at the hour named, if the road was full of trains; that they could not find the way. General Porter called two aides, and sent them off to investigate the condition of the road, and to ask General Pope to have the road cleared so that he could move up. When we got outside, the darkness was so apparent—to use such an expression—and it seemed to be such a matter of impossibility to move, that General Porter said, "In consideration of all the circumstances, I will fix the hour at 3 o'clock instead of 1. You will be ready to move promptly." And I subsequently wrote an order in General Porter's tent for my command to be in line to march at 3 o'clock.
>
> Question. Do you recollect whether, at the same time, Captain DeKay said anything about having difficulty as a guide in showing the road?
>
> Answer. I think he made some remark, that it would be very difficult in getting back; that he would have hard work to find the way. I do not remember the exact language, but it was to that effect.
>
> Question. Were your men very much fatigued by the march of the 27th, and how far had they marched?

Answer. They were very much fatigued. They had marched from Ellis' Ford to Bealeton, and from there up to Warrenton Junction, almost all the way without water, in the dust. It was very warm, and it was with great difficulty I got them along.

Question. Did you march, or attempt to march, at 3 o'clock?

Answer. I did. I had my column formed, and staff officers sent out to notify me when the head of my column would take its place in the line. We marched from the camp up to the road, and there waited until we could take our place, which was at the rear of General Morell's division.

General Sykes testifies:

Answer. About 10 p. m. on the 27th of August, General Porter sent for me. We were then encamped at Warrenton Junction, Va. In his tent I met General Morell, General Butterfield, and Capt. Drake DeKay. General Porter informed me that he had received an order by the hands of Capt. Drake DeKay, directing his corps to march at 1 o'clock a. m. on the 28th. We talked it over among ourselves, and thought that nothing was to be gained by moving at midnight, or 1 a. m., rather than at dawn. I was very positive in my opinion, and gave General Porter my reasons. They were, first, that a night march was always exceedingly fatiguing and injurious to troops; that my command had already marched from 12 to 14 miles that day; that I thought the darkness would cause confusion; that a constant stream of wagons had passed ahead of us from the time my command reached Warrenton Junction until dark; and, above all, I thought that as but two hours, or three hours at most, would elapse between 1 o'clock and daylight, we could make the march in much better order, and march more rapidly, by starting at dawn than if we started at the hour prescribed.

And, again, the same witness proceeds:

The night was unusually dark. Before I directed the advance to be sounded, I sent an aide-de-camp to find the road, so as to lead the column upon it. He returned in a short time, and told me that the darkness was so great that he could not distinguish the road. He also told me that he was assisted in that search by several soldiers.

As anticipated, we ran upon this train of wagons within 2 miles of my camp. They encumbered the road for miles. Myself and staff officers were constantly engaged in opening the way for the head of my column. On several occasions I had to take my mounted escort and place them on the road with drawn sabers to prevent the wagons from closing up any interval that occurred. I do not think that in my military life I ever had so much trouble with a train as I had that day. The wagon-masters and teamsters were alike insubordinate. About 2 miles from Bristoe Station, a stream crossed the road. On the Bristoe side of the stream, General Porter and his staff officers directed and compelled all those wagons to be parked, so that none of them should precede my troops. That order was carried out. I was compelled to halt the head of my command on the Bristoe side of that stream for fully an hour, in order that my rear brigades might be united with the brigade in advance, and the cause of this separation was the train or trains on the road.

General Morell gives an account of the consultation held as to the execution of the order, and to the same general effect. Being asked—

Did the generals then present, yourself included, express in strong terms the difficulty of moving as early as 1 o'clock, or earlier than 3 o'clock?

He answers:

Yes, on account of the difficulty of marching at night. It was a very dark night. It was cloudy and threatening to rain, and did rain before morning.

He proceeds as follows:

If we had moved at 1 o'clock, the men would probably have been kept up all night—have broken their whole night's rest. That was what I wished to avoid, and I think the other officers did also. Reveille would have been beaten by 12 o'clock. I suppose some of the men did not get into camp until dark.

Question. When you moved at 3 o'clock, did you encounter difficulties and confusion in your movements in the darkness?

Answer. Yes, sir; until we had the benefit of daylight, there was a great deal. Directly in front of our camp was a little stream of water, or swale, that made it difficult to get started.

General Griffin, speaking from his own experience in the execution of

the order, is still more emphatic upon the same point. I cite what he says, giving both the questions and his replies:

Question. With a view to reaching Bristoe Station as early as possible that morning, and doing duty there, would it have been expedient or judicious to have started at 1 o'clock that night?

Answer. I think decidedly not.

Question. Please state your grounds for that conclusion.

Answer. I think if we had started just at daylight that morning, we would have arrived at Bristoe Station, if the road had been clear, even sooner than we did by starting at 3 o'clock in the morning, for we would have made use of the two hours of daylight that we were lying in the road. I mean by that, of course, that I think if we had started by daylight, we would have left camp properly, and would not have had the stoppages that we did.

In this connection, the same witness gives the following account of the difficulties which impeded his march:

I received an order, about 12 o'clock on the night of the 27th of August, to move my brigade at 3 o'clock in the morning. At 3 o'clock in the morning I started from camp toward Bristoe Station, and marched about a mile or less, to where I halted, and there I remained at the head of my column until about two hours after daylight. I know the artillery that followed the brigade—that is, a carriage or two of the artillery which followed the brigade—got stuck in the mud, or in a little creek, and had trouble in getting out. I also know that at 3 o'clock it was very dark, so dark that I used candles with my leading regiments to get through a little piece of woods which we left, in which we had been encamped. I also know that there is a bad place for artillery at Catlett's Station. There is a very steep hill there, and also a piece of woods where the road is winding, and which would have made it difficult for artillery carriages to pass along, especially on a dark night. In fact, along on all the road to Bristoe Station there are several little places that would be very bad for artillery to pass over at night—almost impossible in a dark night—that might be passed over in the daytime.

Question. What caused you to halt when you did halt?

Answer. I halted because I found, when I got to the point where I did halt, that I had only a portion of my brigade with me. In the darkness, by some accident or other, we had become separated, and I halted to get my brigade together; and the artillery, I presume, is what detained us there until we started again. That is my impression. I do not know that positively. General Morell was in command of the division.

General Heintzelman, a witness called by the Government, gives testimony, at page 313 [900] of the record, as follows:

Question. Will you state what was the condition of the road between Warrenton and Bristoe on the morning of the 27th of August?

Answer. It was a narrow road, in tolerable good condition; a part of it was through some woods.

Question. Were there any, and, if any, what, obstructions upon that road which would have impeded the movements of troops in large numbers?

Answer. They could only march in one line. There were a few little ditches that were bad crossing, and I think the road crossed the railroad perhaps once or twice. These crossings were bad. I do not recollect distinctly about the road. It was not a very good road, however.

Question. Will you state whether it was, to any extent, obstructed by wagons?

Answer. There was a large train of wagons behind us: a considerable obstruction.

Question. When you say that the wagons were behind your command, are we to understand that you mean to say that they were behind the command of the accused, or in front of it?

Answer. They were in front of the command of the accused.

Question. Will you state what difficulty you had in getting your own wagons up—how long you were engaged?

Answer. The night was very dark; our wagons did not come up until an hour or two, perhaps more, after night.

Question. Had the accused left Warrenton Junction at 1 o'clock on the morning of the 28th of August, would that train have been in his way or out of his way in marching to Bristoe Station?

Answer. I do not recollect distinctly; but I do not think the train had got in the next morning when we left.

Question. Was there, on the 27th of August, a route of march practicable for Gen-

eral Porter's troops from Warrenton Junction to Bristoe Station, so far as you have knowledge of the country?

Answer. That would depend upon where the wagons were. There were places where the wagons would have entirely obstructed the road.

Question. Do you know where the wagons were?

Answer. I do not.

Question. Were there, or not, any repairs on the railroad between Warrenton Junction and Bristoe Station between the time when you passed over it and 1 o'clock of the morning of the 28th?

Answer. I believe not.

In conclusion of the testimony upon this point, I refer to the statements made by Colonel Brinton, lieutenant-colonel of the Second Pennsylvania Cavalry, stationed on the evening of the 27th of August last at Catlett's Station, which is about 3 miles from where my corps then were, and directly on the road to Bristoe Station, to which they were ordered. Colonel Brinton states that he left Catlett's Station to proceed to Warrenton Junction at about 10 o'clock that night; that he returned to Catlett's Station that night, occupying about an hour in returning, and arriving there about 1 o'clock. Thus he must have known, fully and exactly, the practicability of the road for troops at the very hour in question under this first specification. He first testifies that "the night was very dark and overcast; very cloudy; that it was difficult to distinguish the road or any objects on it."

After mentioning that there were two officers with him, his testimony proceeds as follows:

Question. Did you see any wagons on the road over which you traveled?

Answer. Yes, sir. The road from Catlett's Station, for half a mile westward, was blocked up with wagons. We ran into them constantly. The road is there a narrow one, leading through a wood, and it was difficult for us to get along on that account. We ran into a tree on the one hand, or a wagon on the other, without being able to distinguish until we were upon it.

Question. Did you frequently see wagons in the road with their horses unhitched, and their teamsters absent?

Answer. On my return, I noticed that horses were hitched to the wagons. I did not observe it particularly as we were going to General Porter's.

Question. When you reached General Porter, did you speak to him of the condition in which you had found the road?

Answer. Yes, sir; I did. In answer to his inquiry concerning the state of the road.

Question. Did he make of you any request in relation to the road?

Answer. Yes, sir. He requested me to try to have the road cleared, stating his intention to pass along with his corps.

Question. Did you do anything to comply with that request?

Answer. Upon my return, I told the adjutant to send out some men to get these wagons out of the way. The railroad bridge over Cedar Creek is one which, I think, it would be difficult to pass a party of infantry over at night; almost impossible, certainly, without danger. I passed over it, I think, two days before, and led my horse across it, but that was in the day-time; even then it was a difficult matter. Infantry could have passed over it well in the day-time, but the planks were thrown loosely on, and they would be likely to fall through at night. As I was leading my horse across, I saw one fall through that was being led over.

In his cross-examination by the judge-advocate occurs the following passage:

Question. When returning, having no occasion to look for General Porter or anything to interrupt your progress, did you, or not, proceed directly to Catlett's Station without encountering any obstacle growing out of the darkness of the night?

Answer. No, sir; I stopped several times at the wagon trains that lay in the road, between the ford of Cedar Run and our encampment at Catlett's Station. I had been told that our regimental train was one of those lying in the road, and I wanted to find it. And in stopping there, inquiring of the wagons, I experienced great difficulty in finding it. In one train the horses were unhitched from the wagons, and were standing at the wheels or at the tongues of the wagons, where they were fed, I suppose, and in many instances no wagoner could be found. It was my desire to find my own regimental train, which caused some delay.

Question. The point of the question is, whether your delay in returning was at all occasioned by the darkness.

Answer. It was indirectly occasioned by that, inasmuch as I could have readily found our wagon train if the night had not been dark.

Question. I wish to know, supposing you had passed over that road in the day-time—say the evening previous—and had been directed to return directly from Warrenton Junction that night, without having occasion to stop and make inquiries of any kind, whether the darkness was of such a character as would have delayed you in making that journey?

Answer. In answer to that, I would say that I now recall the fact that before coming to the wagon trains we lost our way.

Question. My question is based upon the supposition that you had passed over the road the evening before, and had had the acquaintance with the road which that would have given you.

Answer. It is impossible for me to answer that question. I know that, in consequence of the darkness of the night, we did lose our way. How it would have been if we had more thoroughly known the road, I cannot say.

The following is the whole of his examination by the court:

Question. In the wooded part of that road, how far could you see wagons standing still?

Answer. I do not think I could distinguish a wagon 5 yards off.

Question. How far could you have seen one in the open plain?

Answer. It was so very dark that I do not think that would have made any difference.

Question. With the night as it was, and with the wagons as they were between 12 and 1 o'clock, would the movement along that road of troops in large masses have been practicable; I mean, of course, an orderly movement?

Answer. I do not know as I should answer that question. The court are more able to draw an inference than I am. I give simply the facts. I can give my judgment of it if it is desired. I should think it would have been very difficult to move a body either of infantry or of cavalry over that road at night; almost impossible. They might have been marched in file, following each other in that way.

Question. How as to artillery?

Answer. Artillery could not have been moved without moving the wagons.

Such is the concurring testimony of all the witnesses, who speak from personal knowledge, as to the impracticability of conducting a march of troops in force over that road in the darkness of the night, between 1 and 3 o'clock. As to the railroad which General Pope seems to think might have afforded a passage for the troops, Colonel Clary and Major Fifield, who, in pursuance of the very order now under consideration, were charged with the duty of forwarding the trains from Warrenton Junction to Bristoe Station, both declare that the trains and engines were moving up and down the railroad all the night, and made the movement of troops upon the railroad in the darkness alike dangerous and impracticable. Questions were put to one of the witnesses (General Griffin) by a member of the court, to the effect whether infantry might not have passed over the road during the night if the artillery were left behind, with a proper force to bring it up afterward.

In addition to the unusual, if not unexampled, character of such a movement which appears from the testimony of the witness upon the point, it must be borne in mind that the adoption of such a course by me would have been in *direct* and *palpable* violation not only of the letter but of the whole spirit and meaning of the order which I was trying to execute. That order expressly directed me to "come forward with your whole corps, or such part of it as is with you," and, to make the meaning of the order still more explicit upon this point, the postscript of the order proceeds to specify the single contingency in which two pieces of artillery only, out of the six batteries which I had with me, might be left behind. The language of the postscript is:

If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery as a guard until he comes up, with instructions to follow you immediately.

If, therefore, there was a single point in the order in regard to which all discretion in executing it was precluded, it is this very point of not leaving my artillery behind. To have so left it would have been to make a false military movement, unwarranted by any known example, incompatible with efficient action by my corps at Bristoe, and in direct violation of a positive order.

It is stated by General Pope in his testimony that the want of ammunition in General Hooker's division, then in the near vicinity of Bristoe Station, was an immediate and principal cause of the urgent terms in the order directing me to hasten forward. To this I reply that no such cause of urgency is alluded to in the order itself, though it makes express reference to the state and position of General Hooker's division, nor is there in the whole case a single word of proof tending to show that I knew or suspected, or in any way could have known, that his ammunition was nearly exhausted.

It should also be borne in mind that the very trains upon the railroad, which General Pope directed me to have hurried forward to Bristoe Station, under the superintendence of Colonel Clary, were themselves laden in part with the ammunition which, though I did not know the fact, was there needed. That after the commencement of the march, at 3 o'clock, no personal efforts of my own or of the officers under me were spared to hasten on the movement is, I believe, conceded. Captain DeKay himself on this point testifies that both myself and the officers of my staff made great personal exertions to clear away the wagons at the points where the obstructions occurred.

General Pope testifies that I sent two or three messengers to him to request his aid in clearing the road, and Colonel Brinton, whose regiment was at Catlett's Station, testifies that when he left me, at about 12 o'clock that night, I made the same request to him, and that he detailed a command for the purpose. I understand, also, that my execution of all the precautionary details embraced in the order is not disputed, and that the only point on which I am charged with disobedience to it is in commencing my march at *three* o'clock in the morning, instead of at *one*.

The facts upon which I exercised this discretion are fully before the court, and I leave them with all confidence to its judgment. The right of a general commanding an army corps to exercise a judicious discretion in regard to the best method of executing an order from his commanding general at a distance—and in this case General Pope and myself were 10 miles apart—is too well settled both in military law and military practice to admit of a question. Among the many authorities which may be cited to this point, a single one will suffice. In the work entitled "Napoleon's Maxims of War," published at Paris in 1830, and translated by the Count d'Aguilar, and published in 1861, with a recommendatory preface by Lieutenant-General Scott, at page 42 of the Paris edition occurs the following passage:

> A military order exacts passive obedience *only when it is given by a superior who is present on the spot at the moment when he gives it.* Having then knowledge of the state of things, he can listen to the objections and give the necessary explanations to him who should execute the order.

This is not only military law and authority, but it is the only view compatible with the nature of military service or the dictates of common sense. But if the *right* to use, upon his responsibility, a just and salutary discretion within proper limits is thus vested in every commanding officer, under the circumstances referred to, then it is equally

true that the exercise of such a discretion becomes not only a right but also a manifest and imperative *duty*, when the order is received in a condition of facts wholly unknown to the officer who gives it, wholly different from that contemplated upon its face, and yet bearing most naturally upon the question of the best mode of carrying its real meaning and purpose into effect. That this was precisely the case when I received the order which I am charged with disobeying, is shown by all the testimony, and is undoubtedly fully known to the court.

It may be proper to add, in closing my observations upon this specification, that it fully appears in the testimony that, when I arrived at Bristoe Station, no exigency had presented itself requiring the presence of my corps at that point. General Pope himself, indeed, testifies that the necessity which he contemplated for my early arrival there, when he sent me the order, did not, in fact, occur. But I expressly abstain from laying any stress upon this fact. It should, in my judgment, be considered merely as an accident, fortunate, indeed, but still an accident. I rest my defense upon the grounds above stated, that I executed the order in its full spirit and meaning, to the best of my judgment and ability. It occurred to me during the march, and I have been inclined to believe since, that I may have erred in fixing the hour of march, as I did, at 3 o'clock rather than at daybreak. Positive error, however, *in this direction*, especially in a case so doubtful, may be overlooked. But had I fixed the hour at 1, and so caused *reveille* at or about 11, and thus kept my corps—a large part of it, at least—already almost broken down with the fatigue of long and incessant marches, stumbling about in their camps in the thick darkness of that night, in order then to attempt to move into the road, and grope and stagger and straggle about in a vain and most fatiguing effort all through the night to no use, for what [no] purpose whatever but only to have the day dawn, as it surely would have dawned, and did dawn, upon their inextricable confusion and their broken strength a mile or two, more or less, beyond their camp, then I should, in my judgment, have done an act of wanton cruelty to my command, and at the same time have perpetrated a gross and inexcusable military blunder. If, then, an exigency had really arisen requiring their presence at Bristoe Station early in the morning, in a condition for efficient service, in that case the blunder thus perpetrated would have been aggravated into a crime, for which the literal compliance with the order, written when and where it was, and reaching me as it did, might indeed have been pleaded in excuse, but could not have furnished either to my conscience as a man, or to my judgment as an officer, or to the judgment of the President of the United States, or of this court, or of the country, any adequate justification.

I come now to the second specification of the first charge, which alleges that I disobeyed the order of the 29th of August, addressed jointly and severally to General McDowell and myself, and designated in the testimony as the joint order. The substance of this order is, that General McDowell's corps and my own were to proceed toward Gainesville, on the road running from Manassas Junction to that place, until we should form a junction with other specified corps, which the order supposes to be not far from Gainesville. Then we are to halt. The order proceeds to give in express terms a discretion as to our action under it, and concludes by enjoining upon us not to proceed so far in the direction which it prescribes as to preclude our falling back behind Bull Run on the night of the 29th or in the next morning. After a careful examination of this specification, and of all the testimony, I fail to understand upon

what point or in what manner I am considered to have disobeyed this joint order. General Pope, upon being asked in his examination-in-chief as to the manner in which I had disobeyed this joint order, stated, if I understand him, that I had partially obeyed it and partially disobeyed it; giving, however, no particulars of such partial obedience or disobedience on my part. Being examined further upon this point, he began by stating that I had failed to attack the enemy in flank, as directed to do, not by this joint order, which is now in question, but by the subsequent order of 4.30 p. m. of the 29th, which is not now under consideration. General Pope, then returning to my alleged disobedience of this joint order, produces a note which, on the 29th, I addressed to Generals McDowell and King, in which, after stating my information and belief that our troops were falling back toward Bull Run, I expressed my determination in that state of facts also to fall back to Manassas Junction.

In the same note I stated my unsuccessful efforts to effect a junction with the other corps, as anticipated in the joint order, and some of the reasons why those efforts failed. Now, the writing of this note by me, upon information which turned out to be erroneous, and the expression of determination, in view of such information, to make a retiring movement to Manassas Junction, which I actually did not make, because, in the mean time, my first erroneous information had been corrected by surer intelligence; all this is certainly no act of disobedience. In point of fact, it is no act at all. It is only the expression of an intention never carried into effect; an intention proper, under the circumstances in which it was formed and announced, and an intention which was abandoned by me as soon as more correct information showed its abandonment to be proper. Yet, if my actual disobedience to this joint order does not consist in writing this note and sending it to Generals McDowell and King, then I ask in what else is it charged that I did disobey this joint order? The joint order directed me to proceed toward Gainesville. It is fully proved that when I received that joint order I was already proceeding toward Gainesville under a prior order (referred to in the joint order) to that effect, and that I continued to proceed toward Gainesville in pursuance of that joint order. That order directed me to halt as soon as I could form a junction with the other specified forces, supposed to be near Gainesville. I proceeded until I arrived about on a line with the position of those forces; perhaps a very little in advance of them in the Gainesville direction, and then I did halt, and did make such efforts as it was in my power to make to effect that junction; relying for that purpose mainly upon General King's division, so long as it remained with me, and baffled in this purpose in spite of all my efforts, first, by the unexpected position and force of the enemy immediately in my front; secondly, by the unexpected position of our own corps, specified in the order, which the order anticipated would be much nearer Gainesville than they actually were; thirdly, by the impracticable character of the country between me and them, and, fourthly, by the fact that General King's division was soon taken away from my command by my senior officer, General McDowell, acting with the authority which, under the Sixty-second Article of War, and by the discretionary terms of the joint order, he considered himself to possess.

In proof of all this, I refer in the first place to the testimony of General McDowell, a witness for the Government, who declares that the joint order found, when it reached us, both his corps and my own executing the very movement which it prescribed. He further declares that the

execution of that movement, by both of us, continued under his own direction, as senior officer, until he himself modified the joint order, in the exercise of the discretion which it allowed, by separating his own corps from mine, and pursuing with it a direction not indicated in the joint order.

I refer, in the next place, on this point, to the testimony of Colonel Locke, my chief of staff, who testifies that he delivered to me, between 1 and 2 o'clock p. m., about half an hour after my last interview with General McDowell, on the 29th, a message received by him from General McDowell, directing me to remain where I then was, and informing me that General McDowell would take General King's division along with his own corps. It is true that the giving of such a message to Colonel Locke, to be delivered to me, is not, as General McDowell states, recollected by him; nor is the hearing of it recollected by General King, in whose presence Colonel Locke testifies that it was given. But that it was delivered to me by Colonel Locke, as a message from General McDowell, is affirmed and reaffirmed by that officer in the most solemn manner, as a fact within his positive knowledge and perfect recollection. He corroborated the distinctness of his recollection of its delivery to me, by detailing to the court the unusual tone and manner in which he delivered it to me, and the circumstances and the reflections of his own at the time, which fix indelibly in his memory the message itself, and induced the peculiar manner of its delivery to me, as being, in his judgment, at the time, a fact of a grave and momentous character; indicating nothing less than the taking away from me of my reserve—which he considered King's division to be—at the moment when, as he then supposed, the enemy, posted in order of battle, in great and accumulating force in our immediate front, was about to commence its attack upon my corps. The *delivery* of this message to me at that time by Colonel Locke, who is entirely uncontradicted as to its delivery by him then and there, the court will unquestionably concur with me in considering as one of the facts most surely proved in the whole case.

Now, I submit to the court that the delivery to me at this time by Colonel Locke, my chief of staff, of this order as a message from General McDowell, puts an end to all question as to my disobedience of the joint order. Up to the time this order or message from General McDowell was received, I had been acting jointly with him, but subordinately to him as my senior officer, in the execution of the joint order. His last act, while he was engaged in the very process of separating his corps from mine, that is, as he testifies, in the very process of modifying the joint order—his last act while so engaged was an order, as reported to me by my chief of staff, directing me to remain where I was. That order so reported to me was either in pursuance of the joint order or else it was in modification of the joint order by my senior officer, who, under the discretionary terms of the joint order, possessed, and stated that he possessed, the right so to modify it. It is not denied anywhere that this order, reported to me from General McDowell, directing me to continue to hold my then position, was fully obeyed by me. I did continue to hold my then position until I was ordered away from it, some hours afterward, by General Pope himself, in the order set forth in specification fourth of the first charge, and bearing date 8.50 p. m. of the 29th.

Thus, so far as the joint order was concerned (alleged disobedience of which is the whole of the second specification of first charge), I did to the last obey either the order itself or a legal and authoritative modification of it.

I now proceed to the third specification of the first charge. It alleges disobedience to an order, which it recites as follows:

HEADQUARTERS IN THE FIELD,
August 29, 1862—4.30 p. m.

Major-General PORTER:

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General, Commanding.

In defense to this specification, I affirm and have, as I contend, fully proved before the court—

1st. That complete obedience to it by me was impossible, even if I had received it at the moment that it purports to have been written, that is, 4½ p. m. on the 29th of August; and such complete obedience to it by me was by still stronger reasons wholly impossible; as a military movement would have been wholly inexpedient, injudicious, and improper, even if it had been possible at the hour when I had received it—that is to say, at or nearly at 6½ p. m. of the 29th, when the sun had set, or was just about setting.

2d. I affirm and contend that I have fully proved before this court that, in compliance, so far as possible, with the manifest spirit, purpose, and meaning of this order, I did take measures to carry out the spirit and to accomplish that purpose, and that those measures so taken by me were the only practicable measures for me to adopt under the circumstances, and were far more useful than any attempted literal compliance with the order by me could have been, and that any such attempt literally to obey it, made by [me] at the time when I received it, would have been nothing less than official delinquency, if not crime.

It is needless to add that, if I make out these propositions as here stated satisfactorily to the court, I ask at their hands an honorable acquittal under this specification.

To begin, the fundamental averment of the order upon which it all rests *is entirely untrue.* That averment is, that my line of march, as pursued under the joint order above referred to, brought me in on the enemy's right flank. The fact is, that my line of march as so pursued brought me *not* in on the enemy's right flank, but *did* bring me in directly upon the *front* of a *separate* force of the enemy, from ten to fifteen thousand strong, of the presence of which, thus directly in my front, General Pope, when he wrote the order, was wholly ignorant. He *must plead* this total ignorance as his sole possible justification for sending me this order, because it is abundantly in proof that if I had executed or attempted to execute the order literally, either at the moment when it was written or at the moment when it was received, by falling upon Jackson's right flank, which, as is proved, it was intended to direct me to do, then my column, moving to accomplish that object, must have suffered one of two inseparable and fatal disasters. If I had attempted to move across the country in a direct or nearly a direct line to Jackson's right, I should have been exposed to a murderous attack by the enemy posted in my front, upon the left of my advancing column, as it must then have passed along directly under the fire of that enemy as it moved toward Jackson's, through a country over which I could only

have passed with my corps, if at all, in extreme disorder and without artillery. If, on the other hand, I had adopted the only other course left open to me of falling back to Bethlehem church, and then following in the track by which General McDowell had proceeded three hours before this order was written, up the Sudley Springs road to the battle-field, then the enemy thus posted in force in my immediate front must undoubtedly have fallen upon my rear with such crushing effect as to destroy or rout my whole column.

Thus I affirm that the key to the whole situation, which I held, both at the time this order was written and at the time when it was received, was the presence of the enemy, unknown to General Pope, directly in my front, at a distance of not more than 1,200 or 1,500 yards, and in great and accumulating force, consisting of artillery, infantry, and cavalry.

This enemy, thus posted, I could not attack on his right flank, because his right flank extended farther southward than my extreme left.

This enemy I could not attack on his left flank, because to make such an attack I must have passed through an impracticable country, and, in the inevitable disorder consequent upon that character of the country, my column would have been, as it moved along, exposed to the assault of Jackson's right, and at the same time to the resistance of the separate corps of the enemy, against which it would have been moving.

This force of the enemy thus in my front I could not attack in front, because to have made such an attack in front upon him would have been to uncover my own troops, and present them wholly exposed to his attack from under cover, and in a strong position, while they were moving or attempting to move through an open space, consisting of a country broken with defiles and obstructed by patches of timbered land, through which troops could not pass in order and artillery could not pass at all. Besides this, it is wholly manifest that no such attack upon a separate force of the enemy, posted in my front, was in any way contemplated by the order under consideration.

I proceed now to cite from the record the testimony of eye-witnesses, proving the whole situation as above described.

I begin by incorporating in this defense, as a part of it, the entire testimony of Colonel Marshall, captain in the Regular Army and colonel Thirteenth New York Volunteers. I thus present the whole of his examination-in-chief, his cross-examination by the judge-advocate, and his examination by the court. I give this prominence to his testimony, first, by reason of the fact disclosed in the testimony itself, that what he thus deposes is the highest and best possible evidence in the case, he having been specially assigned, early on the 29th of August, with his regiment, to which another regiment was soon added under his orders, to the sole and exclusive duty of making a careful, continuous reconnaissance of the enemy, and of his constantly advancing and accumulating force in my immediate front, and of the whole military situation to the right of my column, where Jackson's right was operating, and also to the left of my column, in which direction the enemy's line likewise extended. I bear in mind, also, in making this use of Colonel Marshall's entire testimony, the circumstances under which, and the manner in which, it was given, all of them making, as I believe, upon the court as strong an impression as upon myself. His testimony was given by him at his quarters, upon his bed, to which he was confined by a grievous and nearly fatal wound, received in the recent battle at Fredericksburg. His face was pale from weakness and loss of blood, but his eye was bright and keen with the intelligence and the spirit of a true soldier, and what he had to say was spoken with an exactness

of detail and a confident precision of statement entirely fitted to carry with it absolute conviction of its accuracy.

Colonel Marshall's testimony is as follows:

Col. E. G. MARSHALL was then called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. Will you state what is your rank and position in the service.

Answer. Colonel of the Thirteenth New York Volunteers and captain in the regular service.

Question. Where were you on the afternoon of the 29th of August last?

Answer. I was on the road leading to Gainesville—the road from Manassas Junction.

Question. On what duty?

Answer. On duty with General Morell's division, in General Porter's corps, and commanding my regiment.

Question. Specify the character of the duty you were performing that afternoon.

Answer. About 1 o'clock I was detailed by General Porter to go with my regiment across an open country and a ravine to some timber that was facing our line of battle, and deploy skirmishers to find out the position of the enemy, and anything else that I could find out concerning them.

Question. State the position and force of the enemy in the immediate vicinity of General Porter's command, as far as you know it.

Answer. Immediately after going there, my skirmishers were fired on by a body of dragoons, and shortly afterward there was a section of artillery which opened fire upon General Porter's command. Soon after that, perhaps about 2 o'clock, the head of a large column came to my front. They deployed their skirmishers and met mine, and about 3 o'clock drove my skirmishers into the edge of the timber. We were all on the left of the Manassas Railroad, going toward Gainesville. Their force continued to come down all day, in fact, until 1 o'clock at night. It was a very large force, and they were drawn up in line of battle as they came down. I reported at different intervals to General Morell, my immediate commander, the position of the enemy. But at one time I deemed it so important that I did not dare to trust orderlies or others with messages, and I went myself up to him to confer concerning the enemy. This was about dusk. General Morell told me that he had just received orders from General Porter to attack the enemy—to commence the attack with four regiments. He seemed to be very much troubled concerning the order, and asked my advice, my opinion. I told him by all means not to attack; that it was certain destruction for us to do so; that I for one did not wish to go into that timber and attack the enemy. Their position was a very strong one, and they were certainly in force at that time twice as large as our own force—all of General Porter's corps. He had expressed to me the tenor of General Porter's order. I also deemed that we had executed the same with reference to the other part of the army—General Pope's army—by keeping this large body in force, and better than we would by attacking them, because if we had attacked them I felt that it was certain destruction, as we would have had to move our line of battle across this ravine into this timber, and then, perhaps, our line of retreat would have been entirely cut off from General Pope's army.

I may say that this army that came down in our front was a separate and distinct army of the enemy from that which we saw General Pope's army fighting with.

About the same time, before I went in to General Morell, I could hear and judge of the result of the fighting between the force of the enemy and General Pope's army. I could see General Pope's left and the enemy's right during the greater part of the day, about 2 miles off, perhaps more, diagonally to our front and to the right. The enemy set up their cheering, and appeared to be charging and driving us, so that not a man of my command but what was certain that General Pope's army was being driven from the field.

In the different battles I have been, I have learned that there is no mistaking the enemy's yell when they are successful. It is different from that of our own men. Our own men give three successive cheers, and in concert, but theirs is a cheering without any reference to regularity of form—a continual yelling.

Afterward, at dark, I was sent for by General Porter, and questioned very stringently with reference to the enemy; and my remarks to him were the same as I am now making, and as I made to General Morell. I also stated in conversation that I felt that our right was very weak, and that the pickets should be increased, for there was danger of our being cut off entirely from General Pope's army; and I was given one regiment under my command to go to the right of me, and four companies of another regiment to go on the left of me, as pickets; and General Griffin was also ordered to place a strong force on my right, and to connect with me.

Question. The position and force of the enemy being as it was between 5 o'clock

and dusk, and the position and force of General Porter being as it was at that time, was it possible, without the greatest danger, for General Porter to have made a movement to his right, to attempt to reach and attack Jackson on his right?

Answer. No, sir; it was impossible to have done so. In the first place, it was impracticable to cross the country in that position during the day. Again, we would have been obliged to have whipped this very force in front of us, large as it was, to have got there, and it was very doubtful if we could have done it.

Question. They would have attacked you in flank if you had attempted that movement?

Answer. Yes, sir.

Question. Do you know that the order to attack, sent to General Morell from General Porter, was predicated upon the news which General Porter had received that the enemy was retiring?

Answer. General Morell told me that the news was that the enemy were retreating, and, says he, "We know to the reverse; that they are not."

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. Did the force of which you speak seem to come from the direction of Thoroughfare Gap?

Answer. Yes, sir. Whilst the command was being got into line, prior to my going on this duty, my brigade was behind some others. General Porter had sent some dragoons of another regiment to the front, and my brigade was waiting in the road to get into position. I went to the left, and I could see a long line of dust, in fact, I saw two lines, one going along parallel to the mountains, and the other one coming down through Gainesville, and it appeared to be close upon Gainesville at that time, perhaps this side of it; I cannot tell exactly, for I have never been to Gainesville; but the head of the column seemed to be about 5 miles off at that time.

Question. At what hour of the day was that?

Answer. It was 12 or half-past 12 o'clock. I joined my regiment and went on this duty at 1 o'clock. I should say the whole column of the enemy extended to Thoroughfare Gap. This column came down, and came rapidly to our front, as it appeared along the Manassas Railroad. Their whole line seemed to be in the general direction of the railroad from Thoroughfare Gap down to our position. The other line of the enemy's left seemed to go to the left of the enemy's left that were fighting with General Pope. I was so close to the enemy that I could hear their officers give the command to wheel into line, and other commands that they gave, sometimes correcting their men.

Question. You spoke of another line of the enemy's forces that seemed to be proceeding in the direction of the battle-field. Did that line also appear to have come from the direction of Thoroughfare Gap?

Answer. They seemed to come through the same Gap. The two lines joined together at a point just this side of the Gap; where it was I do not know. It was a long distance off from our position. One line seemed to come directly down to the left of the enemy's extreme left, I should judge, and the other column came down to our front. There seemed to be two large armies.

Question. Did you make your estimate of the amount of that force principally from the extent of the line as indicated by the clouds of dust, or had you other means than that of judging?

Answer. My estimate was made mostly from the length of time in which they were coming down—there appeared to be artillery and infantry—and the time that we were attacked; and also what I had seen of the enemy's dust prior to going on this duty, and the length of their lines, as much as I could see of it, in our front.

Question. Would it have been possible to have distinguished the clouds of dust raised by artillery and infantry from those raised by wagon trains moving?

Answer. No, sir. You cannot tell the difference, except by the quickness of movement of these columns. They seemed to move very quickly, which caused me, before going on this duty, to judge that it was the enemy coming. I judged that the advance of the enemy was dragoons, from the fact that there was always a dust ahead of and disconnected from the main column, which moved quicker even than the rest of the line; and, therefore, before going on this duty, I judged that the enemy were coming down to our front.

Question. Would not an ambulance train move as quickly, or very nearly so, as would the artillery?

Answer. Yes, sir.

Question. If the enemy had been in as large force as you suppose, double the force of General Porter's corps, do you not think they would have made an attack on you on the evening of the 29th of August, or would have prevented your withdrawing from there on the morning of the 30th?

Answer. I do not think they would have made an attack on the 29th. Our position

was a very good one; and, if they had attacked, they would have had to move their line over toward us. But I think that, on the morning of the 30th, if we had remained there, they would certainly have attacked us.

Question. You withdrew in their immediate presence, did you not?

Answer. Yes, sir. My opinion on the 29th, while I was on that duty, was, that they desired to remain on the defensive and have us attack them, feeling confident of their position.

Question. At what hour on that evening did you first receive the impression that the battle was going against General Pope?

Answer. Between 4 and 5 o'clock.

Question. Do you think that you communicated to General Morell, as fully as you now state it, your impressions as to the strength of the enemy in your front?

Answer. I think that I did. My object in going in myself to confer with him was that he might get correct impressions; that a dispatch, or a message by an orderly, would not answer.

Examination by the judge-advocate here closed.

Examination by the COURT:

Question. How large a force of the enemy did you see on that day with your own eyes?

Answer. I cannot tell you. I could merely judge of their strength. It was a dense timber in which I was. We would get a view of the enemy first from one point through the timber and then from another. There was no place in which I could see their whole line. Their line of skirmishers was two regiments, at least, whereas mine was but one; and then, again, their troops appeared to be lying down behind this railroad.

Question. Was the line of the enemy extended over the road which General Porter would have used in reaching the right flank of Jackson's forces?

Answer. Provided General Porter had gone directly to General Pope's left, do you mean?

Question. Yes, sir; was that road open or free?

Answer. That road was blocked up by the enemy. There was no direct road to go over to General Pope's left, except by this road that the enemy already had.

Question. Did the enemy in your front make a junction with the enemy in General Pope's front, according to your understanding?

Answer. I do not think they did.

Question. What space do you suppose there was between the two parts of the enemy's forces?

Answer. They would naturally have made a connection with their dragoons. But their line of battle was not a continuous line. Their line of battle in front of General Porter's command was separate and distinct from their line of battle in front of General Pope's command.

Question. What was the space between their two lines of battle, should you think?

Answer. I should judge it to be at least 2 miles.

Question. From the position of the forces, both those of the enemy and our own, would the march of General Porter to reach the right flank of Jackson have been direct or circuitous?

Answer. It would have been circuitous, through a broken country. If he had endeavored to go the most direct route, it would have been through a broken country. But I do not perceive that it was practicable for him to have gone that route. I think that, in order to have acted upon the enemy, he would have had to go back the same route we took the next morning in retreating.

Question. Not practicable because of the character of the country or the position of the enemy?

Answer. Because of the broken country; it was rocky, and then a part of it was very heavily timbered; and it would have been impracticable to have carried artillery through there, besides being fired upon and met by this enemy in our front.

Question. Did you go over that part of the country yourself?

Answer. I could see it; I did not go over it.

Question. What would have been the distance of the march if it had been made?

Answer. He would have had to have gone, perhaps, half a mile or more out of the way by going a little around to the right.

Question. Was that route open, or was it obstructed, either by the nature of the country or by the enemy?

Answer. It was obstructed by the nature of the country. Whether it was or not by the enemy, I do not know. I was told that their dragoons had taken some prisoners at that point, which we would have had to cross over. That point looked to me during the whole day to be a very dangerous one; and that night I so expressed myself, and requested that a strong force should be put in that direction to watch our right.

Question. You have spoken of General Morell's division being drawn up in line of battle fronting the enemy. Will you please state, if you know, the relative position of the remainder of General Porter's corps to that force of General Morell, at the time they were drawn up in line of battle, and your command thrown forward as skirmishers?

Answer. I was informed that they were directly in rear of us when I went on that duty.

Question. Were they in line of battle?

Answer. I do not know. I did not see them. I do not know anything about that. I was informed that they were close behind us. We were in the advance.

Question. You have stated that General Porter's direct march toward Jackson's right was obstructed both by the character of the road and by the enemy.

Answer. His direct march by the most direct route was obstructed; that was held by the enemy.

Question. Was the circuitous route you have spoken of absolutely obstructed or not? Was it a practicable route in any sense?

Answer. I do not think it was a practicable route in any sense, by day or night. I do not think there was any route left for General Porter to have acted upon, except by going back again on the road to Manassas, and then joining our army.

Question. What length of time would it have required to make that march, returning in the way you speak of?

Answer. I cannot tell you the length of time. It would have taken several hours, perhaps about half a day, to have marched and got into position again, so as to have had any effect.

Question. Was that the road taken by you on the 30th?

Answer. Yes, sir.

Question. Did it take a half a day, then?

Answer. I do not know how long it did take us. There was a data which I do not recollect. I would like to say here that I had been out on picket with my command from 1 o'clock on the afternoon of the 29th all that night, until the next morning. We had had nothing to eat until the next morning, and then I could get only a little hard bread, which I made my men carry on their shoulders until we could stop on the march somewhere for them to eat it. I did not feel like making any observations, but went right to the battle-field and into the fight.

Question. Of the line of battle formed by the enemy opposed to General Porter's command between 5 o'clock and sundown, what portion of the enemy's troops were south of the Manassas Railroad.

Answer. They were more along the railroad. The railroad came down close to us, off a little to the right of my skirmishers; so that, in advancing my skirmishers, my right came on to the railroad much sooner than my left.

Question. Were any of the enemy's forces south of that road?

Answer. They were along the railroad, but none this side of it, except skirmishers. I met dragoons along the whole front, and particularly on this direct road; and then afterward their skirmishers came to my front and extended in a longer line than I did, and drove me in.

Question. Supposing the force of General Porter to have been extended from the point where General Morell's command was down to Bethlehem church, could not a large portion of them have moved along the Sudley Springs road to the battle-field within a much shorter period of time than you have named for the whole movement?

Answer. By all means, much sooner than we would.

Question. Do you know any reason why that road was not practicable for an advance on the 29th?

Answer. I do not know any reason why it was not practicable.

Question. Would such a separation of General Porter's corps on the 29th, by a part of it moving up the Sudley Springs road to the battle-field, have been an eminently dangerous military movement at that time, considering the position and force of the enemy in front?

Answer. It would be unusual to separate parts of a corps, and particularly with such a large force of the enemy in our front. It would have left us very weak in our position in the advance. I understood that the part of the corps that was left behind by General Porter was left there as a support to us, to be used in any direction that he saw fit. It would have been unusual, and I think it would have been criticized by General Porter's officers, to have sent them off in any other direction, leaving us alone with this large force of the enemy in our front.

Question. Suppose the case of an order from General Pope to General Porter to make the movement to assault the right of Jackson's army, could that Sudley Springs road have been taken by any portion of General Porter's corps to accomplish that object?

Answer. Yes, sir; it could have been taken, but it could not have been taken when we got the order in time to have met the enemy and done anything.

Question. You mean done anything by daylight?
Answer. Yes, sir; by daylight that day—to have done anything that day.
Question. Did the battle cease immediately after daylight?
Answer. Yes, sir; the battle ceased about dark.

The examination of this witness here closed.

I might rely upon this testimony alone as entirely conclusive for my answer to the third specification of first charge now under consideration, but it is proper for me to say that in this testimony Colonel Marshall is supported by the clearest corroborating evidence.

In this connection I refer, in the first place, to the testimony of Major Hyland, which is found on pages 697 to 703 [995–997] of the record. Major Hyland belongs to the same regiment of observation, the Thirteenth New York Volunteers, of which Colonel Marshall is the commanding officer. Premising that Major Hyland, in his examination-in-chief, stated that his regiment and himself with it were employed as skirmishers to the front of General Morell's division from about 1 o'clock of the afternoon of the 29th until daylight of the next day, and that the Twenty-second Massachusetts and Berdan's Sharpshooters were placed on the same duty, and that he also stated, speaking of the enemy, that he could hear the commands plainly, as if forming in line, and that he also heard the movements of their artillery coming into position, I cite for the consideration of the court the whole of the evidence given by him under the cross-examination of the judge-advocate, and in reply to the subsequent questioning of the court. It is found on pages 701, 702, 703 [995–997] of the record, and is as follows:

Maj. GEORGE HYLAND, jr., called by the accused, and sworn and examined as follows:

By the ACCUSED:

Question. What is your position in the Fifth Army Corps, and what was it during the latter part of August?
Answer. I was major of the Thirteenth New York, the second regiment in the First Brigade of General Morell's division of General Porter's corps.
Question. Where were you on the 27th of August last?
Answer. I was with my regiment on the march from Kelly's Ford to Warrenton Junction.
Question. At what hour did your regiment arrive at Warrenton Junction?
Answer. They arrived there about dusk of the 27th.
Question. What was their condition as regards fatigue?
Answer. They were very much fatigued and worn out. They also needed provisions, as they had had no provisions that day to any amount.
Question. At what hour did you march the following morning?
Answer. About 3 o'clock.
Question. Where were you on the morning of the 29th of August?
Answer. On the march from Bristol to Manassas Junction.
Question. Where did you go from Manassas Junction?
Answer. We went on the Gainesville road; on a road to the front leading to Gainesville, I supposed; I did not know at the time what road it was.
Question. How was your regiment employed on the afternoon of the 29th?
Answer. It was employed as skirmishers.
Question. How was it situated with respect to your command—Morell's division?
Answer. We were to the front of Morell's division.
Question. How long were you so employed?
Answer. We were so employed from about 1 o'clock of the afternoon of the 29th until daylight of the next day, the 30th.
Question. What other regiments were engaged in the same duty?
Answer. The Twenty-second Massachusetts and Berdan's Sharpshooters were placed on our left in the evening.
Question. Was there any enemy formed in your front during that time?
Answer. There was.
Question. Do you know at what hour they commenced forming, or about what hour?
Answer. They commenced forming between 2 and 3 o'clock, I think.
Question. Do you know the route by which they came?

Answer. They came from a direction which I was told was from Thoroughfare Gap. There appeared to be two columns of them.

Question. And along what road?

Answer. They came down the railroad, as I supposed at the time, and filed to our right.

Question. Can you point out on the map before the court the position occupied by your regiment, and the position occupied by the enemy on that day?

Answer. [The witness indicated the position on the map.]

Question. Were the enemy, at any time, forming on your left and front?

Answer. No, sir; I did not see any enemy to our left. There was none there that I was aware of.

Question. Did they pass at all to our right of the railroad?

Answer. Yes, sir; they passed to our right and front; I could hear them very distinctly.

Question. Have you any knowledge of their forming to attack during that day?

Answer. Yes, sir; I could hear the commands plainly as if forming in line; I could hear the movements of their artillery coming into position.

Question. Did any of their artillery open upon you during the day?

Answer. The artillery to the right of our skirmishers opened upon us.

Question. Not the artillery that was in your front?

Answer. Not directly in our front.

The examination by the accused here closed.

Examination by the JUDGE-ADVOCATE:

Question. How far in front of General Morell's command did your regiment, in its duty as skirmishers, proceed in the direction of the enemy?

Answer. Probably from 800 to 1,000 yards.

Question. What is the character of the country there?

Answer. The country in front of us was quite heavily timbered. Between us and General Morell's division the country was an open country, with a deep ravine there, and a stream running through it. In front of us it was heavily timbered, and there was also some scrub pine.

Question. Can you state about what force of the enemy took position in front and right of your regiment, as deployed in advance of General Morell's division on the 29th?

Answer. I could not state the number, but it appeared to be a very large force, indeed.

Question. Can you state how many thousands, or divisions, or regiments?

Answer. I could not state the number of thousands or divisions. I judged from the movements, and from the commands given, that there was a very large force, indeed; probably a larger force than we had.

Question. Did you report this force to General Porter or to General Morell?

Answer. I reported to Colonel Marshall, my commanding officer.

Question. Do you think the force of which you have spoken was sufficient to have made a successful resistance to General Porter's entire corps?

Answer. I do.

Question. Do you base that opinion upon the supposition that the enemy had there more than 10,000 or 12,000 men?

Answer. I could not state the thousands. But from what information I had, and from what I could get from the other officers, I thought their force was very heavy, indeed. I should think there were probably 10,000 troops in front of us, judging by the columns of dust that I also saw coming from the same direction.

The examination by the judge-advocate here closed.

Examination by the COURT:

Question. In your answer as to the strength of the enemy in front of you, do you take into consideration the location of the enemy as adding strength to his position?

Answer. I do.

The examination of this witness here closed.

In corroboration of the evidence given by those two officers, I refer next to the testimony of Lieut. James Stevenson, of the same regiment (the Thirteenth New York Volunteers), who, as he states, has been nearly two years in the service with his regiment; was with it on the Peninsula during the seven days' battles before Richmond, and in the recent battle at Fredericksburg. His testimony appears from 808 to 822 [1022–1026] of the record.

Seeing the enemy in my front from a different point of view from that

of the other two officers, he fully confirms in his several answers, in general terms, their statements as to the position and force of the enemy. He states that he saw the enemy in regiments, and, from all that he could observe, he judged their force in the immediate front of my column to be, during the afternoon of the 29th August, from twelve to fifteen thousand men. But what is special in his testimony is the fact stated by him, that on the 29th of August, between 1 and 4 o'clock in the afternoon, he passed from the left flank of General Pope's army to the position then occupied by Colonel Marshall's regiment. He made the passage in as direct a line as he could. There was no direct road which he could take, and he went across the country. He states that it was rather rough country, partly wooded, with a number of small ravines, and that, in traversing, he found it necessary to dismount once or twice. He states positively that it was not a country through which troops, infantry and artillery, could be marched in large masses. He also states that if I, with my corps, had taken the direct route to attack the enemy, who were engaged with Pope, I must have passed over about one-third or one-half of the different ground which he traversed. He adds the confident and repeated statement that I could not have moved with my corps to make an attack on the right flank of the enemy, engaged with General Pope, without exposing my own column as it moved to the attack of the enemy formed in my front. This opinion, not given as that of a military expert, but simply as that of an intelligent eye-witness, having had very special and peculiar opportunities of personal observation, appears from that circumstance well entitled to consideration as important corroborating testimony.

In further corroboration of the testimony of Colonel Marshall and Major Hyland as to the forces and position of the enemy in my front, and as to the character of the country between my corps and Jackson's right, I refer to the testimony of General Griffin, forming with his brigade a part of General Morell's division, which was the head of my column on the 29th. He states in his examination-in-chief (page 646) [983] that, early on the afternoon of that day, he attempted to go to the right, and moved probably about 600 yards across the railroad, when he met with obstructions which he could not get through. On page 650 [984], in his examination-in-chief, he gives his testimony to the effect that any attempt on my part to attack the enemy, who were massing in front of us, on their right or rear as they were then moving, was impossible. In his cross-examination by the judge-advocate, on pages 658 and 659 [986], he testifies directly to the large force of the enemy forming a line of battle obliquely to the front of my column, and coming toward us in force from Thoroughfare Gap all the day long.

In further and final corroboration of the testimony upon this point, I refer to the evidence of General Morell, as given in his examination-in-chief, on page 581 [969.] Referring to the state of things at sundown on the 29th, he testifies as follows:

> The only attack we could have made at that time would have been directly in our front. The firing of which I spoke was far to our right, and at that time we could not have got there. The troops in front of us were under cover in the woods. If we had moved forward, we would have gone over this open space. We would have been exposed to the fire of the enemy without any possibility of effectually returning it.

In reply to the question whether his force could have passed through the woods on his right in any good order to attack the enemy in that direction, he says [969]:

> I doubt whether we could have got our artillery through even by daylight. We might have passed through the woods with our infantry, but not in any fighting order at all.

On page 599 [973] of the record, in his cross-examination by the judge-advocate, General Morell states explicitly:

> The enemy in our front, if we had moved to the right, would have threatened our own left very seriously.

In continuance of his cross-examination on page 602 [974], General Morell also testifies, referring to the official map:

> The only enemy that I supposed were within my reach were directly in front of us, just about where this line is. I could not see them; I could only judge from the reports. When they opened with their artillery they were directly opposite my front, and then a short time after that some guns opened from the top of a hill off to their left, considerably beyond our right.

On this mass of affirmative evidence I rest the fact, now perfectly ascertained, and altogether controlling in this trial, that, during the whole afternoon and evening of the 29th of August last, a powerful and continually increasing separate force of the enemy was in battle array, in an almost impregnable position, directly in my front.

But I cannot take leave of this most important point without a moment's reference to the strange and only effort which has been resorted to through or by the officer who has signed the charges against me to rebut the testimony which I have presented. For this purpose, General Benjamin S. Roberts takes the stand, and informs the court that, not having any special command during the 29th of August, he traversed the greater part or the whole of the battle-field of General Pope, having been early in the day furnished with an eye-glass by General Pope, and directed with it to watch from afar the advance of the re-enforcing bodies of the enemy as they appear to have come up from the gaps in the general direction of the battle-field and its vicinity. He states that he did thus carefully watch the clouds of dust which they raised, and that in his undoubting judgment the masses of the enemy's troops were mostly moving on the Warrenton turnpike, between Gainesville and the battle-field. He appears, by his testimony, during his rides over the field, to have had one or two glimpses of some portion of my force, but he does not pretend that he saw anything of it after 1 o'clock. He thinks he was at one time within a mile and a half of my line, but, unfortunately for his observations, a wood intervened between him and me, and so he could see nothing of me or my force. The ground in my front, in which the enemy was posted, he does not pretend, as I understand, to have seen at all. In this state of facts, in reply to a question from the court, he testifies his confident conviction that there was during the whole afternoon no enemy's force in my front save only some cavalry with some light artillery. When such rebutting testimony as this, mere speculation and conjecture at the best, is deliberately presented upon such a point at the close of this more than forty days' trial by the inspector-general of the Army of Virginia, my accuser upon the record, I respectfully submit to the court that it is more than conclusive proof—it is manifest confession—that neither the commander of the Army of Virginia, who does not pretend to any personal knowledge on this point, nor the Government, can produce one particle of rebutting evidence as to the whole fact of the enemy's force in my front which is entitled to a moment's consideration even if it be fit to be heard.

To return, then, to the propositions in which I stated the general line of my defense against this specification, I now respectfully submit to the court that they are both satisfactorily made out to the full extent of the terms in which they are stated. That I could not at any time have literally obeyed the order of 4.30 p. m. of that day, by attacking

the right of the enemy's forces which it directed and intended me to attack, namely, those under Jackson, is too clear to admit of dispute or doubt. What, then, remained for me to do in compliance with the general spirit and meaning of that order as a military movement of co-operation with the army of General Pope? Why, it was, beyond peradventure, my duty to do just what I did do, as directed by General McDowell when he left me; that is, hold on to the strong position in which my front was posted, with my center and rear within close supporting distance, and thus hold in check before me the massing forces of the enemy, which, but for my presence there, would have closed up at once upon Jackson's right, crushed our forces in front of it, outflanked General Pope on his left, striking General McDowell on the Sudley Springs road, fall on the left of his column as it moved northward toward the battle-field, and this force surely doomed General Pope's whole army which was engaged that day to an inevitable and signal defeat, even though its efforts had been, if possible, more heroic and its courage more stubborn than they were. It was the presence and menacing aspect of my corps in its strong position before this separate enemy which alone prevented him from the overwhelming and decisive movement upon General Pope's hard-pressed left and upon General McDowell's column as he approached the battle-field. Thus I say, then, that I complied with the meaning and spirit of General Pope's order; and, when I received it, General Pope was in a position of peril which he did not suspect or imagine, but from which I could shield him so long as I could hold my position.

It was in this view that I sent Colonel Locke, my chief of staff, with a message to detain General King. I felt that I might, I knew not how soon, need his force. And in the event of my not needing it against the enemy in my front, I trusted to it, up to the hour when it was taken from me, to effect, if possible, by a circuitous route, my desired connection with General Reynolds on my right. Why, then, in this situation, did I, just before I received the order of 4.30 p. m., direct General Morell to prepare for an attack upon the enemy? I answer, because at that hour I had just received a message from General Hatch by my aide-de-camp, Lieutenant Weld, as he testifies without contradiction, which led me to suppose that General Pope's left, if not his center, were then forcing back the enemy with whom they were engaged.

In that state of facts, I ordered General Morell to make prompt dispositions enabling him to push on vigorously in pursuit, because it was to have been expected that in such a case of retreat of the enemy opposed to General Pope, the force in front of General Morell would either have left their position to join in that retreat, or else have moved from that position to protect the retreat. And in either event the true military policy of the moment was for my column to be all ready to push on to the assault. General Morell at once dispatched a messenger to inform me that my information of the retreat of the enemy was a mistake, and at the same time, in obedience to my order, he proceeded to make his dispositions for attack. Before his messenger reached me with these tidings, the order of 4.30 p. m., now in question, was placed in my hands. At once I dispatched Colonel Locke, my chief of staff, to the front, to order the commencement of the attack. When I learned the truth of the case, that the enemy was not retreating, I rode rapidly toward the front, examining for myself the situation, and, seeing that it was on all accounts, and especially by reason of the commencing nightfall, impossible that day to do anything effectual, I issued the order to remain as we were and continue to hold our position. When I

reached the front, I saw the dispositions for that purpose being made. In proof of what I here state, I cite the following passage of the testimony of General Morell as it stands written on pages 578 and 579 [968] of the record. He says:

A little while before sunset—just about sunset—I received an order, in pencil, from General Porter, to make disposition to attack the enemy. That order spoke of the enemy as retiring. I knew that could not be the case from the reports I had received, and also from the sounds of the firing. I immediately sent back word to General Porter that the order must have been given under a misapprehension, but at the same time I made dispositions to make the attack in case it was to be made. Colonel Locke soon after came to me with an order from General Porter to make the attack. I told him, and I think in my message to General Porter I spoke of the lateness of the day, that we could not do it before dark. Before I got the men in position to make the attack, the order was countermanded, and I was directed to remain where I was during the night. General Porter himself came up in a very few minutes afterward, and remained with me for some time. It was then just in the gray of evening, between dusk and dark. I then put my men in position for spending the night.

I now add to this testimony the following explanatory statement of General Morell, as written on pages 628 and 629 [979] of the record.

Maj. Gen. George W. Morell, after hearing his testimony read, made the following explanation:

"I am satisfied, upon reflection, that the order of the 29th to attack was not countermanded prior to the receipt of the order to pass the night where I was. I construed the order to pass the night as being virtually a countermand of the order to attack. I was making dispositions to pass the night when General Porter joined me."

And now, in a word more, I close all I have to say as to this third specification of the first charge, and the disobedience which it alleges of the order of 4.30 p. m. of the 29th, which it sets forth.

That order was written to me in contemplation upon its face of several essential conditions of fact, every one of which was *reversed* in my actual situation, either at the time when the order was written or when I received it.

It contemplated my presence on the enemy's right flank, but both when it was written and when it was received I was actually in presence of the enemy in great force, and almost impregnably posted in my direct front. It contemplated the possibility of direct access by my corps to Jackson's right flank; both when it was written and when it was received by me, such access to Jackson's flank was impossible by the character of the intervening country, and, if attempted by me, would have brought with it the swift and sure destruction of my corps by the enemy in my front. It contemplated an attack by me on Jackson's right, while, at the same time, I should keep up connection with General Reynolds on my right. Both when it was written and when it was received to have kept up connection with General Reynolds would have led me in one direction, and to have attacked Jackson's right would have led me in a widely divergent, or rather in a nearly opposite, direction; and each of these movements by me, both at the time when the order was written and when it was received by me, was so utterly impracticable, and so surely disastrous, that no commander in his senses, being where I then was, and knowing what I knew, could possibly have ordered, or sanctioned, or attempted to execute either one of them, to say nothing of the extreme absurdity of attempting to execute both of them at the same time. The order, when it was written, contemplated an attack by me in the daylight. When it reached me, the sun was setting, or had set, and before it could reach my front the dusk was on and darkness at hand. When it was written, it contemplated an attack by me in cooperation with the main battle; when it reached me, that battle was

receding from me; and before the order could reach my front and be obeyed, that battle, in its force and volume, was about to cease.

Such, may it please the court, as proved by the testimony which I have cited, is my case as to the order in question, and my defense against the third specification of the first charge. I leave it here, with all confidence in the candid consideration of the court.

And now I state to the court that I do not deem it necessary to make other or further answer than that which, under this specification, I have already made to the second charge, or to either of the first three specifications under it.

The fourth and last specification under the second charge was withdrawn by the judge-advocate immediately upon its presentation to the court, and before the trial began. This specification, relating to my conduct on the 30th, appears to have been communicated to me by the Government under a total misapprehension of the facts, and only in consequence of its thus having been communicated inadvertently to me does it appear upon the record at all. It having been immediately and formally withdrawn, I, of course, could not plead to it, nor offer proof in relation to it. This fact I regret. In view of the character of the evidence introduced as to the feelings and intent toward General Pope, which have been so strangely and unaccountably imputed to me, my whole conduct in the battle of Saturday, the 30th of August, is, as I contend, legitimate matter for the consideration of this court. But in this view I have been overruled by the court, and all evidence offered by me to show my conduct in that battle has been excluded. I desired to produce that evidence, but under the ruling of the court I must content myself with the assumption, manifestly made by the Government in its withdrawal of the specification, that in that battle I did my whole duty. More than my whole duty, according to my sense of it, it would have been then impossible for me to do—for any man to do.

To return, then, briefly, to the second charge, and the three specifications under it, which have not been withdrawn:

The second charge, in its terms, is "violation of the Fifty-second Article of War," but its meaning, as I understand it, is misbehavior before the enemy; because I do not perceive in any of the specifications of the charge anything imputed to me which can, by any possibility, be regarded as constituting any of the other offenses enumerated and made punishable by that article. I observe, indeed, that the second of the three specifications referred to charges that I did shamefully fall back and retreat from the advance of the enemy without any attempt to give them battle, and without knowing the forces from which I shamefully retreated. I observe also that the third of the three specifications referred to charges that I did shamefully retreat away and fall back, with my army, to the Manassas Junction, and both these specifications aver that these said shameful things were all done by me on the 29th of August last.

In view of the proof which I have cited in this defense, even to say nothing of the other eight hundred or more pages of proof which appear upon the record, and which I have not cited, may I not, without more words, respectfully ask this court to adjudge that both of these averments are simply ridiculous? Where is there one particle of proof, in the whole record, that I fell back or retreated, with my whole army, to Manassas Junction, either shamefully or not shamefully? Where, on the whole record, is there any proof or pretense that I did, on the 29th of August, with my army, retreat or fall back at all? Why, at half-past 3 of the morning of the 30th, I received an order, which General Pope

had written at fifty minutes past 8 on the evening of the 29th, imperatively commanding me to report to him in person on the battle-field; and then, and not till then, did I leave the far advanced and strong position which I then held in front of a great force of the enemy, and hurry back to join him on the field. What, I ask, is the sense and meaning of the averment *that I did not know* the forces before me, and from which it is charged that I shamefully retreated, when all the proof is that I, who, with my corps, held them in check, and the brave and skillful officers and men whom I had set to watch them and make reconnaissance of them, and hold them where they were, were, in fact, ourselves the only men belonging to the Army of Virginia who did, on that day, have any knowledge of those forces or of their position, or of the great power with which it was held, and with which, but for the presence of my corps, it menaced there all the fortunes of that hard-fought day of the 29th?

Is it my accuser on the record, who, in view of the testimony he has given on this point, and in view of that which I have presented, is here now to tell you that *I did not know* the forces of the enemy with which on that day I had to deal? But I will not tax the patience of the court with further argument or protest against these details of accusation. I smite them, one and all—the charge and its three specifications—with the solid mass of evidence, which, as I conceive, has already beaten down the charge of disobedience to the order directing me to attack the enemy on his flank. That testimony shows my behavior before the enemy.

Standing upon that testimony, I defy all accusation, and I challenge all proof, that it was misbehavior. I affirm that it was faithful, zealous effort, made according to my best judgment, then and there, to aid to the utmost my country, her army, and her cause; and I further affirm that all the proof, and all reasonable judgment of it, show that by those efforts, mainly, was prevented a great and fearful addition to whatsoever of disaster or failure did then occur.

I proceed, now, to notice the only two specifications against me which yet remain to be answered, being the fourth and fifth specifications of the first charge, which respectively allege that I disobeyed the order of 8.50 p. m. of the 29th of August, directing me, immediately upon the receipt of the order, to march my command to the field of the battle of the 29th, and to report there in person to General Pope. The former of these two specifications alleges that, in disobedience to this order, I permitted one of the brigades of my command to march to Centreville, out of the way of the field of battle, and there remain during the entire day of Saturday, the 30th of August last. The brigade here referred to is that of General Griffin.

The latter of the two specifications alleges a similar disobedience to the same order, in that I permitted one other brigade attached to my command—being the brigade commanded by General A. S. Piatt—to march to Centreville, and that I thereby greatly delayed the arrival of the said brigade on the field of battle, on Saturday, the 30th of August last. I shall briefly consider together these two specifications.

And, first, I remark that I do not understand it to be denied that, upon the receipt of the order above referred to, at or about 3.30 a. m. on the 30th of August, I did at once proceed to take with me a portion of my command to the battle-field. General Pope, himself, states explicitly in his testimony that he makes no complaint as to the time at which, with that portion of my command, I arrived (four hours before fighting) upon the field, as directed. It only remains, then, for me to

show that I adopted the proper measures to bring about, in so far as possible, the same result as to the rest of my command.

It being undisputed that General Sykes, with his division, was immediately in rear of the division of General Morell, and that the division of General Sykes did, under my orders and lead, proceed in due time to the battle-field, I now cite the testimony of General Morell as to my action in the premises, immediately upon the receipt of the order in question, at 3.30 a. m. of the 30th, in respect to the remainder of my corps. The testimony of General Morell which I cite appears on page 584 [970] of the record, and is as follows:

Question. At what hour on the morning of the 30th of August did you withdraw from your position, and under what order? Please also state what took place at the time you withdrew.

Answer. A short time before daylight, on the morning of the 30th, I received a written order from General Porter—which I have with me—directing me to lose not a moment in withdrawing, and to come down the road toward him.

Question. Will you read the order, and state the time of its receipt?

Answer. There is indorsed upon the order, in my handwriting, "Received a few minutes before daylight, August 30, 1862."

The order is as follows:

General MORELL:

Lose not a moment in withdrawing and coming down the road to me. The wagons which went up, send down at once, and have the road cleared; and send me word when you have all in motion.

F. J. PORTER,
Major-General, Commanding.

Your command must follow Sykes'.—F. J. P.

Question. Do you recollect who delivered that order to you?

Answer. Captain Monteith, of General Porter's staff.

Question. State what took place in consequence of that order.

Answer. I immediately issued the order to the commandants of brigades and of the artillery to get ready to return, and to get them in motion as soon as possible. I think General Butterfield's brigade moved first, and then Colonel Barnes' brigade; General Griffin's was to bring up the rear.

This testimony of General Morell is wholly uncontradicted; and I submit that it is of itself a conclusive answer to the whole specification in which General Griffin's brigade is referred to. It is due, however, to that able and energetic officer that I should cite another passage of General Morell's testimony, which shows the honorable and responsible position assigned to him in this movement, and discloses the causes by which his brigade was so delayed as afterward accidentally to lose its way [970].

Question. Was the purpose of keeping Griffin's brigade back the anticipation of an attack on your rear while withdrawing?

Answer. Yes, sir; I supposed that we would be attacked. In the afternoon of the day previous, Colonel Marshall, who was in command in front, sent in a report that the enemy were passing down toward the railroad in the woods on our right. And I supposed that when the enemy discovered us at daylight in the morning they would be likely to attack us.

Question. Did General Butterfield's and Colonel Barnes' brigades get to their destination, or, rather, did they take a different road from the one you took?

Answer. Yes, sir; so I afterward understood.

Question. How soon after discovering that you had taken the wrong direction did you proceed to join the command on the battle-field?

Answer. As soon as I discovered it; I went on myself almost immediately.

In reference to the delay of General Griffin's brigade, General Morell (as appears on page 589 [970] of the record) testifies as follows:

I heard firing of artillery, the first I had heard during the day; I ordered my horse and rode to General Griffin, and told him that I heard firing, and that we must move immediately. He spoke of his men being out of rations, which he said were being issued then, and that they were very much fatigued. I told him that I should go on without waiting for him, and that he must follow as soon as possible and do the best he could. I then went on with my staff, and when I reached the battle-field I met two brigades of my own division just coming out of action.

The movements of General Griffin, in pursuance of this order from General Morell at Centreville, are described by himself, at page 670 [989] of the record, as follows:

Question. At what time on the 30th, if at all, did you move from Centreville toward the battle-field?

Answer. I should think about 5 o'clock in the afternoon.

Question. What prevented your getting to the field?

Answer. The road was blocked up by wagons and stragglers coming toward Centreville, and the bridge at Cub Run was broken through so that it was impossible to get past it at all.

Question. Did you go to the bridge, or how far did you go?

Answer. I got to the bridge with the head of my brigade.

I here close my answer to the specification charging me with disobedience of orders in permitting General Griffin's brigade, on the morning of the 30th, to proceed to Centreville. I never did permit any such movement. The movement occurred through an accidental mistake, and in unintentional disobedience to my positive and very peremptory instructions, which directed General Morell's division, including General Griffin's brigade, to follow General Sykes, who, with his division, led by myself in person, proceeded directly to the battle-field, under my order to that effect.

A single word, now, as to the movement of General Piatt's, or, more properly, of General Sturgis' brigade, on the morning of the 30th, and I close what I have to say in answer to the two specifications now under consideration.

On page 654 [985] of the record, General Griffin's testimony, under examination by the court, and entirely uncontradicted, is set down as follows, in reference to his movements at daybreak on the morning of the 30th:

Question. What did you know of the direction you were to take?

Answer. I understood from the staff officer who brought me the order that the division was to follow General Sykes.

On page 655 [985] of the record, General Griffin testifies as to General Sturgis as follows:

Question. Did you see any other forces belonging to General Porter's corps on the way?

Answer. Near Manassas Junction we passed General Sturgis, with Piatt's brigade. He said that he had been directed to follow Sykes, and wanted to know which way he had gone.

Upon these undisputed facts, I do not feel at liberty further to argue before this court the question whether I disobeyed the order which directed me to proceed, on the morning of the 30th, with my corps, to the battle-field of the previous day. I did so proceed, and I gave all the proper orders, directing my whole corps to accompany or to follow me. I affirm that it was wholly prudent and proper for General Morell's division, in moving away under these orders from the immediate front of the enemy in force, to use careful precautions to prevent or repel the assault of that enemy upon our rear.

General Griffin's brigade was detailed for that special duty, and I say he is to be commended for his attention to the execution of that important duty, although it resulted in his accidental failure, by reason of missing his road without my knowledge, to make his way direct to the battle-field in pursuance of my order. But whether or not the court concur with me in this opinion, the fact still remains that I, as the general commanding the corps, did fully and cordially obey with the utmost promptness and celerity the whole of the order of General Pope direct-

ing me to proceed with my corps to the battle-field. Why, indeed, should I not have thus wholly obeyed it, if I obeyed it at all? Can any human being suggest a phrase purporting to be a reason, or to state a motive why I should myself, in pursuance of the order, on that morning have taken the mass of my corps into that grim fight, and then have permitted two brigades, in violation of the order, to go in another direction? Do I use too strong language when I respectfully state to the court that such an accusation against any sane general officer is little less than an absurdity?

And now, having disposed of the several charges and specifications presented against me, I proceed, briefly, to comment upon the origin and circumstances of this accusation, and the testimony of some of the witnesses who have appeared to support it. In doing this I shall, I trust, practice all due reserve. I shall abstain from saying at this time much that I have to say, which is yet very fit to be said, and which may be said hereafter.

By reference to the record, pages 28 to 32, inclusive, it appears that this general court-martial was convened by a general order, which dissolved a military commission (an illegal tribunal) previously convened, as the order convening it under date of——— recites, to investigate and report upon certain charges preferred against me by Major-General Pope.

By reference to page 82 [840] of the record, it appears that General Pope, under date of 5th ultimo, testified before the court that up to that day he had preferred no charges whatever against me. Evidently, therefore, at the very outset of these proceedings, and even before these proceedings commenced, some one in connection with them had perpetrated a mistake so extraordinary and unusual that it should rather be called a blunder. I ask the court here to consider whether this mistake or blunder does not cast a strong and strange suspicion over the origin and inception of this whole accusation. In the testimony of General Pope and of Colonel Ruggles, it appears that, at Fairfax Court-House, on the morning of the 2d of September, in the course of a conversation which is proved by Colonel Ruggles, General Pope's chief of staff, to have related to the series of occurrences embraced in the charges and specifications now before this court, that he, General Pope, did declare, in substance, to me that he was satisfied or entirely satisfied with my explanations, except as to the single point of Griffin's brigade; that he intended to take no further proceedings against me, though he might against General Griffin. By the testimony of the same two witnesses, it appears that on that day, and immediately after that conversation, General Pope received an order which brought him at once back to Washington; and, by the testimony of Colonel Ruggles, at page — of the record, it appears that General Pope, on the 5th or 6th of the same September, two or three days after his conversation with me at Fairfax Court-House, held a conversation with Colonel Ruggles, of which, in his testimony, at page 618 [977] of the record, Colonel Ruggles, being cross-examined by the judge-advocate as to the circumstances by which he was led to remind General Pope of his declaration to me at Fairfax Court-House on the 2d of September, as above referred to, makes the following statement:

> General Pope told me that he did not wish to appear as a witness against General Porter, but that he should summon me as the principal witness. I told him that I was not acquainted with all the circumstances of the case; that, though chief of staff, I had been employed as an aide-de-camp much of the time from the 25th of August up to the time of the battle of Chantilly, on the 1st of September, and that

orders had been issued by him that I knew nothing of. He then said to me, "You know that such orders were given?" I answered, "Yes, sir." He said, "And you know *that they were not carried out?*" I answered *that that was what I had been told; that that was my impression. He then said that that was sufficient; that he would have me summoned as the principal witness.* Then, according to my recollection, I reminded him of that conversation. I felt that I was not sufficiently conversant with the case, and I immediately reported this conversation to the Adjutant-General of the Army, and to Colonel Kelton, the Assistant Adjutant-General, at the Headquarters of the Army, and requested that General Pope might be summoned as a witness in the case. They told me that he should be summoned, and both of them also told me to see Colonel Holt about it; but, before doing so, I understood that the order for the trial had been suspended, and the impression was that there would be no trial. I therefore took no further action in the matter.

Before offering any comments upon this testimony, I am very glad, in so far as relates to the distinguished judge-advocate of this court, to insert into this defense, in justice to him, the following brief but entirely satisfactory evidence as to his action in the matter. I quote from Colonel Ruggles' testimony, as written in pages 623 and 624 [978] of the record, and given under examination by the accused:

Question. Were you summoned by the Government to testify in this case?
Answer. I was summoned by the Government.
Question. Who discharged you, and why?
Answer. On the 16th of December I reported to the judge-advocate of this court that I had been detailed as judge-advocate of a court-martial, to be convened at West Point on the 18th of December, and asked him if I should be needed in this case of General Porter. After some consultation, he told me that he did not think he would need me, and said he thought I had been summoned as a witness for the defense. I told him no; that I was a *witness for the prosecution.* He then told me I might go to West Point, and, if my presence was required here, I would be telegraphed for. I went on, and on the evening of the 28th of December I received a telegram to come on here.
Question. From whom?
Answer. It was signed by the Adjutant-General.

The record proceeds to state the admission of the accused that that telegram had been sent at his request.

I now respectfully ask the court to consider, in connection with the origin of this accusation, and the testimony of General Pope in support of it, the now cited extracts from Colonel Ruggles' testimony; and, first, I observe that it is not of the slightest importance whether or not Colonel Ruggles is correct in his recollection that on the 5th or 6th of September, on the road between Arlington and Washington, [he] did remind General Pope of the exculpatory declaration which he, General Pope, addressed to me at Fairfax Court-House three or four days before, that is, on the 2d of September. Colonel Ruggles states that, to the best of his recollection, he did, on the 5th or 6th, so remind General Pope, and that General Pope, when reminded, made no reply. But to this point of the reminder, as it may be, Colonel Ruggles' reiterated testimony is positive and peremptory to the point that he distinctly heard General Pope make the exculpatory declaration to me at Fairfax Court-House on the 2d of September, at the close of our conversation, and in a voice loud enough to be heard all over the room.

The exact remembrance by Colonel Ruggles of the one exception made by General Pope to the general terms [of] that exculpation, when he uttered it to me, is perfect proof that Colonel Ruggles heard the exculpation itself with attention, and that it then and there graved itself in his memory. His careful doubt as to whether General Pope did certainly use the word "entirely" before the word "satisfactory," in addressing that exculpation to me, is proof of the conscientious circumspection with which Colonel Ruggles gives his most important testimony. His belief that the word "entirely" was used by General Pope, goes, therefore, far

to prove that it *was* used. His immediate reference of the *one exception* to the case of Griffin's brigade, though it was not named by General Pope as being the exception, proves, first, that the conversation had embraced the military operations of the days just passed, as well as the participation of my corps in these operations, and, secondly, it proves conclusively that Colonel Ruggles had overheard enough of the conversation to know at that time the topics upon which it had turned.

In fact, General Pope himself, far from contradicting, in any essential particular, Colonel Ruggles in his testimony as to General Pope's declaration to me at Fairfax Court-House, does himself, in the main, confirm that testimony. He intimates, indeed, that the exculpation was partial and limited; but he admits that it embraced the principal fact that he intended to take no further proceedings against me, and he expressly places that intention upon the additional and still more important fact that he did not then believe me guilty of intentional or purposed crime or delinquency. Remember this was six days after my first, and four days after my last, alleged offense had been committed. If offense had been committed by me, and that during that six days General Pope and myself had been in constant communication, if I was guilty it was then high time for him to know it. If my alleged guilt had brought or menaced great disaster or danger to his army and upon this capital, as the charges and specifications aver, then it was official delinquency, if not imbecility, in General Pope not by that time, the 2d September, to have found it out. Remember we had had our explanations before he made his declarations to me. Remember that he himself states that at the explanation he knew and mentioned what he considered to be very unkind and unfriendly written comments upon his military plans and proceedings before, as he states, I had a chance to know them. And yet, with all these lights upon my conduct; with all my military acts, as now embraced within these charges and specifications, full and fresh before him; with all their consequences, then fully developed, he deliberately decides and declares that he shall take no further proceedings against me, being (save upon one comparatively immaterial point) satisfied with my explanations, and convinced that I am not guilty of intentional crime. Three, or, at the most, four days elapse, and all this is changed. On the 5th or 6th of September, as Colonel Ruggles has testified here, and as he then immediately reported to the Adjutant-General and the Headquarters of the Army, we find General Pope urging Colonel Ruggles to be the chief witness upon my trial, which, it would appear, had then been decided upon. Why this urgency on the part of General Pope to his chief of staff? Did he wish me to be tried? Did he wish me to be convicted, that he was organizing and arranging the whole hierarchy of evidence against me; assigning to his own chief of staff the principal part of the drama, and then, as appears from Colonel Ruggles' statement, assuring, or attempting to assure, that officer that his impressions or information that I had not obeyed the orders given me was sufficient; and that he, notwithstanding his expressed reluctance, should be summoned to the stand as principal witness against me? What had happened in this short interval to effect so wonderful a change in the mind and purpose of General Pope? He tells us plainly he had come to Washington, and here he had been made to see my military conduct in a new light. *His eyes were open here*—that, I believe, is his very phrase—to many things that he had not rightly judged before; and now, on the 5th or 6th of September, if we may judge him by his conversation with Colonel Ruggles, he is hot in my pursuit. His eyes are opened!

What a confession is here! The commanding general of the Army of Virginia comes to Washington to have his eyes opened; to see aright in the light of alleged criminality my military acts, done under his orders, in the dark night of the 27th of August, at Warrenton Junction, or on the critical and anxious day of the 29th of August, on the road to Gainesville, or on the perilous ridge of battle, where it raged at the field of Bull Run, on the eventful day of the 30th. I ask this court to consider whether all this be not without example. What has happened to General Pope? He has indicated in his testimony that when in Washington his eyes rested upon certain telegrams, by which they were opened to discern my guilt. Where are these mystical proofs of crime? Let them be produced! Are they the communications which passed, by the telegraph, between me and General Burnside, and which I, with great painstaking, have crowded into the case as part of my defense, against the manifest reluctance and even in reversal of the rulings of this honorable court, which at first deemed their exclusion its duty, because of their supposed irrelevancy? Are they the three or four telegraphic communications from me to General Burnside, which were introduced in evidence by the prosecution, with my cordial assent, and which I would have introduced without hesitation, if the prosecution had not presented them? If these papers prove my guilt, or tend to prove it, or raise a reasonable suspicion of intention on my part to fail my commanding general, sacrifice the army of my country, and betray its cause, then let words and letters, in which such damning guilt is manifested, be set forth, so that all men may read my criminality with its doom.

I have done my part to accomplish all this, if it be of possible accomplishment. I have furnished to the newspapers the entire mass of these papers, and, so far as I could do it, have scattered them over the land as proofs that I was thoughtful, watchful, provident, laborious, incessantly and zealous in duty, willing to assume responsibility, and assuming it at Williamsburg and elsewhere to reach quicker than the quickest the Army of Virginia, when I knew that the rebels had moved in mass to destroy it. But I will not go on upon this point. I respectfully state to the court that I did not do all this under the eyes of McClellan, and Burnside, and Tucker, and Morell, and Sykes, and Reynolds, and Butterfield, and Griffin, and the rest who testify that they saw me do it, in ceaseless labor and carefulness, by night and by day, in spite of sickness and in spite of weariness, with the purpose to fail that army or its commander in their hour of peril, and shamefully to betray them and almost inevitably the loved and noble corps which was then my own into the jaws of danger and death. It was not to this dire end, it was not [to] this fell purpose, that I watched and took counsel in the night of the 27th at Warrenton, and then strove to do my best duty there in hurrying forward as fast as I could, in obedience to orders, before the morning dawned; or that I pushed on toward Gainesville on the morning of the 29th, as ordered; or that I held my all-important position through the anxious afternoon of that day, to divide and distract the enemy and hold his massing forces in check; or that, on the morning of the 30th, I plunged into the thick of the fight while that same enemy which I had confronted and held from advancing the day before moved swiftly on, just as when, under the imperative order of 8.50 p. m. of the 29th, I left my strong position, and thus opened his road I feared he would move to make his furious onset upon our left flank. Personally I was glad to be with my corps where the fight raged on the 30th. But I state my deliberate judgment as a military man that, but for that

peremptory order, I had no right to be there. It was a false military movement. My post of real military power was the rising ground which Morell's division, backed by the rest of the corps, was holding. Had we been permitted to hold on there, the terrible attack upon our left flank on the 30th would never have been made. I could and would have stopped it then, as I did stop it the day before. If the major-general late commanding the Army of Virginia, whose inspector-general is, at least, my nominal prosecutor here, doubts the truth of what I now say, let him produce, if he can, as I asked him to produce at the trial, the note which I sent him by Capt. Douglass Pope at dusk, in reply to his order of 4.30 p. m. of the 27th, directing me to attack Jackson's right, and he will then learn, or at least recollect, what I at that moment judged concerning both the position of the enemy and my own. Let him publish that note, since it has not been produced, if he can even at this late day find it, and then all who choose to compare that note with what I have just stated will know that the military theory of the position which I now express with all confidence has ever since that day remained in my mind unchanged.

And this brings me back again reluctantly to consider further the testimony and the action of General Pope in this matter. Believing, as it appears that he did, on the 5th or 6th of September last, that I had, by criminal conduct and intent, put his army and this capital into great peril, why did he not then exhibit charges against me? Was it fit, if, after his eyes had been opened at Washington, he did at last see me as a man stained with the guilt which his subordinate, three months after, has undertaken in these charges to impute to me—was it fit for him, as a patriot or a soldier, or as my commanding officer, to stand by in silence and see me, for months afterward, invested with high and most responsible command? Does not the fact that he did thus so long stand silent, cover this whole accusation, to the judgment of all candid men, with the odious suspicion of being, at the best, a mere afterthought, if not something far more wicked and malignant? On page 52 [840] of the record of the session of this court, on the 5th of December last, appears, in the testimony of General Pope on that day, the following statement:

> It was not until the campaign was closed, and I came to Washington City, on the 4th or 5th of September, that I was informed by the President of the United States that he had seen several dispatches or letters from General Porter to General Burnside, dated a day or two previous to these battles, which had occasioned him very grave apprehensions that General Porter would fail to do his duty. This communication of the President to me opened my eyes to many matters which I had before been loth to believe, and which I cannot bring myself now to believe.

I invoke attention to the carefully measured, yet most sinister, language of this whole declaration, made by a man filling a high place in the service of his country, under the solemnity of an oath. But, most of all, and first of all, do I stand up here to repel and repudiate with just indignation the inference which may afflict many a well-meaning but uninformed mind, upon the reading of this testimony, and which, peradventure, may have touched in this my trial even the enlightened and calm judgment of this court, to the effect that, on the 4th of day of September last, the President of the United States could, by any possibility, have harbored in his mind, even for one moment, the apprehension or the suspicion, based upon telegrams of mine, or anything else in my conduct, that I was, or was capable of being, the guilty man whom these charges, which I have now crushed down under a mighty mass of refutation, indicate and describe. With still more indignation and scorn do I repel, by the oath of whomsoever supported, the scandalous thought

that the President of the United States could have been in any way, directly or indirectly, consciously or unconsciously, instrumental on that day in instilling into the mind of General Pope, or into any other mind, the venom with which these charges reek. In refutation of any such foul calumny, I point triumphantly to the fact that on the 5th of September I was, under the direction and by the authority of the President of the United States, invested with the command of 18,000 men, to guard a portion of the defenses of Washington. In the same view, and for the same purpose, I point triumphantly to the further fact that, after acting in that high and honorable post to the 12th September, I proceeded, under the same authority and direction, to share in the labor and peril and to rejoice in the glory of that noble army which drove the massed rebel force out of Maryland, in the hard fights of South Mountain and Antietam, and that in that army I held the command of my former corps, augmented by a new division. Did all this indicate that I was looked upon on the 4th of September, as this testimony would seem to indicate, by that highest authority, as a man guilty, or capable of being guilty, of the offenses now charged upon me? In the same view, I point to the telegram which I received from General McClellan, and which is upon the record of this court, in evidence, with an explanation by General McClellan, indicating an apprehension in the mind of the President, on the 3d of September last, that there might be some unkind feeling between the two armies then in Virginia. That telegram, when I received it, I did not fully understand as a message addressed to me; but now I know, by General McClellan's testimony, that I was selected and trusted by the President as the proper officer of the Army of the Potomac through whom General McClellan's great personal influence with that army might operate effectually to remove any such unkindness, if any should unhappily be found to exist. In view of these facts, I exhort General Pope to find some other and better explanation for his so suddenly distempered mind than he has in his testimony above cited given, or than his subordinate officer, my accuser on this record, has been able in this trial to prove.

I come now to say a few words of the testimony of General McDowell. I shall speak of him as a witness with entire calmness and candor, because, though I speak with regret, I shall speak with no disrespect. His testimony, taken as a whole, has astonished me beyond measure. I feel that it has done me more harm and more wrong—I charitably hope unintentional wrong—than has been done to me by all the rest of the testimony of the prosecution put together. In saying this, I, of course, lay wholly out of view what I cannot but consider as the ravings of Lieutenant-Colonel Smith—I believe he is lieutenant-colonel—about his fifteen minutes first and last interview with me on the morning of the 28th at Manassas, when he thinks that he saw in my face that I had a crime on my mind, and comes up here to encumber the record of this honorable court with that and similar rubbish about my being a traitor, because, forsooth, I thought it would hurt General Pope if he left his wounded behind, and because I seemed indifferent about getting ammunition, which he knew at the very time that I had just made a requisition for (although he didn't know what this court know and what the record shows), that I had just sent out two of my officers to look after it, and because he thought it was a monstrous thing that I should have intimated the possibility of the army falling back toward Alexandria, and that it might, perchance, find the ammunition there, in case that the wagons laden with it should have gotten so far out of their way, and, finally, because I seemed to him to have a sneering though perfectly courteous

and polite manner, as he expressly states, whenever I referred to anything connected with General Pope. All these things were quite too much for him, and though there was no harm in the words I spoke if they had been written down, yet, as I spoke them, they fixed him in conviction that I was a traitor; not exactly a traitor according to law—that he did not mean—but a traitor through personal hostility, and, I suppose, also through a "sneering manner" toward General Pope. I submit to the court that, in so far as I understand this person's testimony, this is a true and fair picture of its sense and substance on this point, that is to say, if the court can find any substance or sense in it. I can spend but very few words more upon Lieutenant-Colonel Smith's testimony, but as he seems so very much grieved about my thinking about the possibility of our having to fall back to Alexandria, I cannot but refer to the last answer given by General Heintzelman when called by the Government to testify upon this trial, and, speaking of the state of things on the 27th, 28th, and 29th of August, he testifies as follows:

> I knew that the enemy had possession of the railroad, and that, of course, we were obliged to fall back.

I may be permitted to hope that this straightforward declaration of the heroic and experienced Heintzelman will alleviate the sensibility and dispel the horrible suspicions aroused by a passing remark from me somewhat in the same sense, which, by the way, if I ever made it, has quite passed out of my memory. I will further suggest that men who mean to be traitors, or quasi-traitors, and, at all events, to fail a general whom they have strained every nerve to reach by forced marches, in order to co-operate with him against an enemy who is rushing upon him, they do not usually adopt the course of revealing the intended treason which is in their hearts by a sneering manner to a chance visitor in a first brief interview, especially when he happens to be a member of the staff of that very general whom the aforesaid traitors or quasi-traitors intend to fail or betray.

I will also more seriously suggest that a soldier's face may sometimes seem to be clouded by other feelings and forebodings than those of a traitor with his crime upon his mind, especially when, as in my case on the 28th of August, that soldier happens to command an army corps, and sees before him, as I then did, a whole military situation not at all satisfactory in its aspect to his military judgment. But enough, perhaps too much, of Lieutenant-Colonel Smith's wild fantasies and strange, wild words of testimony in which they are expressed. Hoping that this passing and parenthetical exposure of them in their naked futility may not be deemed wholly superfluous, I return to the wholly different and broadly contrasted testimony of General McDowell. Upon this testimony I remark with regret that General McDowell appears to have forgotten almost all that I remember of what took place between us on the 29th of August last, either face to face or by message, and that he seems clearly to remember some very important matters of which, after my best efforts, I can find no trace whatever, either in my memory or my action, or his action, or the communications direct or by message which on that day passed between us. I assume that this court, having regard to the clear, positive, and direct concurrent testimony of two eye and ear witnesses, Colonel Locke, my chief of staff, and Captain Martin, chief of artillery in General Morell's division, both of highly respectable character and position, and both upon the point to which they testify wholly uncontradicted, does not doubt that General McDowell did, not far from midday on the 29th of August, ride up to me,

and, after saluting me, say, in reference to the position which I then occupied, "Porter, this is no place to fight a battle; you are too far out already." Of course, the court does not doubt that we then rode away a short distance together to the right of the advance of my corps, and that we soon after parted, General McDowell to proceed toward the Sudley Springs road, and I to return to the position at which he first spoke to me after our meeting. I assume, also, that the court will believe that Colonel Locke, about half an hour afterward, heard from General McDowell's lips what he understood to be at the time he heard it a message to me from General McDowell, *directing me to remain where I was*, and informing me that General McDowell would take General King's command along with him away from the position which he then held. General McDowell does not directly contradict either of these statements, being evidently careful not to do so, but he testifies that he does not recollect his opening remark to me, as above quoted, nor the message which, as coming from him, Colonel Locke delivered to me. On the other hand, General McDowell testifies that he, just as he parted from me, said to me, "You put your force in here, and I will take mine up the Sudley Springs road, on the left of the troops engaged at that point with the enemy," or "words to that effect." He adds, "I left General Porter with the belief and understanding that he would put his force in at that point."

It is not disputed anywhere that, if he gave me the above-quoted direction, he meant by that I was to attack the enemy's forces then engaged with General Pope's left wing. Now, I state with all confidence to this court, that this testimony of General McDowell, first, that he did give me that direction so to attack, and that he left me understanding that I assented to it, and, secondly, that he does not *recollect* his opening remark to me about my being too far out, and in no place to fight a battle, nor his message to me delivered by Colonel Locke in less than half an hour afterward—this testimony of General McDowell, affirmative and negative, constitutes, I affirm, the whole strength and entire substance of this prosecution. . Day after day, before he took the stand, I had broken down effectually, by cross-examination, every particle of the testimony of the Government witnesses, one by one, as they came up, which even appeared to have any perceptible tendency to make out a case against me. Yet, most strange to say, this peremptory order to attack, which General McDowell says he gave me, and that I assented to, and which it is not pretended that I carried into effect, or tried to carry into effect at all—this order to me, and my disobedience to it, is nowhere even hinted at in either of the two charges or eight specifications under them, which my accuser has so wantonly and wickedly spread out against me, and which I am now trampling down under my feet; and it is well that this alleged order to me by General McDowell does not so appear charged or specified, for now I will demonstrate that he did not then give me, and cannot be believed to have given me, any such order. First, such order, if then given by him, was in the most flagrant and total contradiction of the first remark which I have proved upon him conclusively, by the positive and reiterated oath of two witnesses, both of whom—one my chief of staff, Colonel Locke, and the other General Morell's chief of division artillery, Captain Martin—swear that they heard him make the remark, and give in their testimony his very words, and stand in so swearing not only unimpeached but uncontradicted, while they perfectly corroborate each other. Secondly, this order to attack, which General McDowell says he gave me, is in flat contradic-

tion with the message directing me to remain where I then was, which my same chief of staff swears most positively that he, a few minutes after the alleged giving of that order, did receive from General McDowell, and did forthwith deliver to me, as being a message of such great importance in his judgment at the moment as, for reasons which he fully renders in circumstantial detail, to fix itself indelibly in his mind, and to have remained in its very terms perfectly in his recollection from that day to this. Thirdly, General McDowell does not pretend to state or to remember any reply whatever made by me to him when, as he says, he gave me that order and understood me to assent to it; but this court well know, in view of all the proof upon this record, especially as given as to my position before the enemy, is the testimony of Marshall, Hyland, Stevenson, Morell, and Griffin—all speaking in just the same sense to the point, that if I had then received from McDowell such order to attack, it is utterly incredible and impossible that I could have received it with immediate and silent assent, and have permitted him to leave me without discussing it, and stating my objections to it. Still more utterly incredible and impossible is it, that if I had thus received and assented to that order, and then failed to act in pursuance of any such direction, that I could possibly have abstained from sending to General McDowell, who was, for a long time afterward, as his own testimony shows, within a mile and a half of me, any notice or explanation whatsoever of my failure so to act. Such a course would have been sheer insanity, utter craziness in me or in any other army corps commander in my position. Such conduct on my part would have resounded along the lines of the whole army. It would have been proclaimed forthwith at the headquarters of General Pope. It would have been blazoned among these charges and specifications side by side with the order itself, and, if true, it ought to have made the words of exculpation which General Pope uttered to me at Fairfax Court-House on the 2d September, four days afterward, choke him as he spoke. But it is not true that General McDowell then, or at any time on that day, gave me any such order "to put my troops in there," or to do anything of the kind; and fortunate is it for General McDowell that it is not true, for if he had given me any such mandate, to thrust my corps in over that broken ground between Jackson's right and the separate enemy massing in my front, the danger and disaster of such a movement would have been then and now upon his hands. I am glad that I can say that General McDowell is utterly in error upon this point, and is in no way chargeable with such fatal military blunder. It is not alone that I am as clear as I can be as to any fact in my life that I received at that time no such order from him, but it is demonstrated in what I have said, as well as in what else stands proved in this record, that no such order to me could have been then by him given.

Unable, as he testifies, by habit of mind, accurately to remember the divisions of time, he has plainly confused in his testimony, I will charitably hope, not without some efforts, though unsuccessful, at accurate recollection, the situations, the sayings, and the doings of different days. I have said that I would speak of his testimony with calmness and candor, and without disrespect. Under strong provocations I have kept my word, but I have demolished his testimony before you, and with it the whole prosecution falls, and the accusation is left to the condemnation and derision of all just men.

F. J. PORTER,
Major-General.

Mr. PRESIDENT AND GENTLEMEN: My defense is now concluded. Before, however, I deliver it into your hands, I hope to be indulged in some remarks more exclusively personal. To speak of one's self in terms of commendation is always unpleasant, and is generally against the laws of good taste; but there are occasions when it becomes unavoidable. The sensibility which it then wounds must submit to the infliction, because a higher sensibility demands the sacrifice. When a soldier's reputation is impeached, his loyalty assailed, and even his cowardice insinuated; when the safety of his country is said to have been purposely and causelessly hazarded by him in the indulgence of some low, petty, contemptible motive, it cannot be expected that he is to be restrained by the delicacy which belongs to the ordinary intercourse between gentlemen. If his past life gives the lie to the charge; if it exhibits conduct totally inconsistent with its truth; if it speaks a nature that would revolt even at the thought of the crime; if it evinces a long and perilous course of duty, and an ardent and ever-enduring love of country; a constant zeal for the honor of its flag and an undying devotion to its service; if, in the present crisis of its history, from the first moment that unhallowed ambition started on its career of treason, he has given himself with sleepless vigilance, and amidst countless hazards, to do what he could to put down the foul rebellion and reinstate the authority of the Government; if, until the unfortunate Virginia campaign of last summer, his services were approved by the public, by his brothers in arms, and signally acknowledged by the President—if these facts are true of myself, then I may be well excused for proudly invoking them as an answer to the false and groundless imputations upon my duty and honor as a citizen and a soldier. What, then, has been my history? First, I served, then being a mere youth, in the Mexican war, throughout the resplendent campaign of Lieutenant-General Scott, and was actively engaged in the several battles of Vera Cruz, Cerro Gordo, Contreras, Molino del Rey, Chapultepec, and the city of Mexico. I entered on that service as brevet second lieutenant, Fourth Regiment of Artillery, and was breveted as captain for distinguished service in the battle of Molino del Rey, and as major for like service in the battle at the city of Mexico. Second, in February, 1861, I was ordered by the then Secretary of War, Mr. Holt, your judge-advocate, to proceed to Texas for the purpose of withdrawing as many of the troops of the United States as I could from that State, and thereby counteracting, as far as possible, the effects of the then recent, unexampled, and base treachery of General Twiggs. Amidst great difficulties and much personal peril, I succeeded in rescuing seven companies, in all 500 men, and in re-enforcing Tortugas, Key West, with four companies, and bringing three to New York; the whole duty being performed to the perfect satisfaction of the Department. Third, in May, 1861, I was commissioned as colonel in the Regular Army, and in August a brigadier-general of volunteers, and afterward served throughout the Peninsula campaign, under Major-General McClellan. At the siege of Yorktown, he constituted me director of the siege. In the battle of Hanover Court-House, I commanded a corps, now the Fifth Corps of the Army of the Potomac. In the battle of Gaines' Mill, my command being about 27,000, I lost in killed, wounded, and missing 9,000 men; a fact which tells the severity of the conflict. In the battle of Malvern Hill, a site selected by myself the day before for the fearful and test struggle with my own corps, and which was joined by the commands of Generals Sumner, Heintzelman, and Couch, each cheerfully engaging in the conflict and rendering every assistance possible, amounting in the

aggregate to some 18,000 men, through the skill and gallantry of my officers and the indomitable bravery of my troops, I succeeded in totally repulsing, and with slaughter unexampled in any modern battle, long-continued, desperate, and most gallant assaults of from 30,000 to 40,000 of the enemy, evidently as brave soldiers as ever trod the battle-field. For my services at Hanover Court-House I received the recommendation of my chief for the brevet of brigadier-general in the Regular Army, and the like recommendation for services at Gaines' Mill, for the brevet of major-general in the Regular Army. This recommendation is dated the 9th of July, 1862, and is as follows:

HEADQUARTERS ARMY OF THE POTOMAC,
Camp near Harrison's Bar, July 9, 1862.

HON. E. M. STANTON,
Secretary of War:

SIR: The energy, ability, gallantry, and good conduct displayed throughout the eventful period of this campaign, through which we have just passed, by Brig. Gen. F. J. Porter, deserves the marked notice of the Executive and of the nation. From the very commencement, his unwearied assiduity in his various duties, the intelligent and efficacious assistance which he has rendered me under all circumstances, his skillful management of his command on the march, in the siege, or on the field of battle, and his chivalric and soldierly bearing under fire, have combined to render him conspicuous among the many faithful and gallant spirits of this army. I respectfully, therefore, recommend that Brig. Gen. Fitz John Porter receive the brevet of brigadier-general in the Regular Army for Hanover Court-House, May 27, and the brevet of major-general in the Regular Army for the battle of Gaines' Mill, June 27.

I have the honor to be, sir, very respectfully, your obedient servant,
GEO. B. McCLELLAN,
Major-General, Commanding.

P. S.—If there were another grade to add, I would ask it for the battle of Malvern. The latter eclipses in its result any other engagement in the campaign, and too much credit cannot be given to General Porter for his skill, gallantry, and conduct on that occasion. If there be any vacancy among the general officers in the Regular Army, I ask one for him. I saw myself the dispositions he made and the gallantry he displayed. I do not speak from hearsay, but from personal observation. Would that the country had more general officers like him.

GEO. B. McCLELLAN,
Major-General, Commanding.

ADJUTANT-GENERAL'S OFFICE,
Washington, January 9, 1863.

A true copy.

E. D. TOWNSEND,
Assistant Adjutant-General.

Prior, however, to the receipt by the honorable Secretary of War of this letter, I had, unsolicited, been promoted by the President a major-general of volunteers and a brevet brigadier-general in the Regular Army.

May I not confidently refer to these testimonials of the President and of my general as of themselves a confutation of the calumnies with which reckless ignorance or interested malice have for months endeavored to fill the public ear?

Traitor to my country! When did treason so endeavor to maintain the authority of its Government?

Traitor to my country! When did treason so labor and peril life to rescue it from destruction?

Traitor to my country! Indifferent to the honor of its flag, gratifying a supposed personal dislike, regardless of the safety and reputation of the men intrusted to my command, and who had followed me, and apparently with ever-increased confidence, through the terrific ordeal, the fire of battles unparalleled in fierceness, fury, and mortality! If the

charge had not assumed the solemn form that has been given to it, it would be received everywhere, where my whole conduct is known, as ludicrously false or the creation of a morbid or distempered brain.

Without assuming to myself a purer patriotism than animates the soldiers of the Union, I say fearlessly that none, no, not one, loves our Union with a stronger, a holier love. There is nothing in the future, as there has been nothing in the past, that I would not do and gladly do to achieve its victory over its enemies and to bind up the wounds under which it now bleeds. Life! what is it to the soldier who is false to his flag and his country? Life! what will be its value to the soldier (may God avert the calamity!) who may survive to witness its flag trailed in the dust, its reputation and power broken, its people separated into fragments, their fraternal affection converted into bitter sectional hate, and the cause of constitutional freedom itself for ages, if not forever, extinguished? As far as one arm and the aspirations of one heart may be exerted to avert the dire calamity, mine will be used to the last moment of my life. I live now amidst whatever discouragements surround us, and through the gloom which they cause, cheered only by the anticipation that all will yet be well; that our Union will emerge from its present dangers even stronger for the trials through which it is passing; that it will be ours once more to be proud of and to glory in and again serve to light the world by the effulgence of its example; that it will become, as it was but recently, a monument of past renown and a pledge of future glory, and will so continue "till time's last echo shall have ceased to sound."

F. J. PORTER,
Major-General.

ADDENDA.

REVIEW OF THE JUDGE-ADVOCATE.*

JUDGE-ADVOCATE-GENERAL'S OFFICE,
January 19, 1863.

SIR: In compliance with your written instructions, under date of the 13th [12th] instant—

To revise the proceedings of the court-martial in the case of Maj. Gen. Fitz John Porter, and to report fully upon any legal questions that may have arisen in them, and upon the bearing of the testimony in reference to the charges and specifications exhibited against the accused, and upon which he was tried—

I have the honor to submit the following report:

As the *animus* of the accused toward his commanding general, in pursuing the line of conduct alleged against him, must largely affect the question of his criminality, and may furnish a safe and reliable light for your guidance in determining points otherwise left doubtful by the evidence, it is proper that it should, if possible, be ascertained before entering at large upon the review of the case, which you have instructed me to make.

General Porter, with his command, belonged to the Army of the Potomac, which had closed its disastrous campaign on the Peninsula just before the moment at which the narrative of the events set forth in the record before you is taken up by the witnesses who have deposed. General McClellan and Assistant Secretary of War Tucker state that he displayed great energy and zeal in debarking his troops

* Reprinted from H. Ex. Doc. No. 71, Thirty-seventh Congress, third session. See letter from the Acting Judge-Advocate-General, p. 1134.

and hastening their departure for Aquia Creek. The former, however, adds that it was not then known to the accused that he was to be placed under the immediate command of General Pope, the question of the command not having at that time been decided. It should likewise be borne in mind that the transfer of the Army of the Potomac, once begun, was a movement of extreme peril, and that extraordinary efforts on the part of all engaged in it were prompted, not only by those high considerations of patriotism which must be supposed to have been present, but also by the equally urgent instincts of self-preservation. The order of General Halleck, directing the junction of the command of the accused with that of General Pope, seems to have reached him at Aquia Creek. From this he proceeded, in obedience to the order, to effect the junction, and at that time, as we learn from General Burnside, he lacked confidence in General Pope, and shared the distrust, alleged by the witness to have been entertained by many officers, of his capacity to conduct the campaign in which the Army of Virginia was then engaged. He reported to General Pope by note on the 26th, and in person on the morning of the 27th of August, 1862, at Warrenton Junction. In the brief conference which ensued between them in the forenoon of that day, he must have acquired all the information he then possessed as to the plan of the campaign and as to the disposition of the forces of the contending armies. After this conference, at 4 o'clock p. m. of that day, he sent to General Burnside the dispatch first referred to in the testimony. In that dispatch, interspersed amid various items of military intelligence, are found the following expressions:

We are working now to get behind Bull Run, and I presume will be there in a few days, if strategy don't use us up. The strategy is magnificent and tactics in the inverse proportion. I was informed to-day, by the best authority, that, in opposition to General Pope's views, this army was pushed out to save the Army of the Potomac—an army that could take care of itself.

Most of this is private, but if you can get me away, do so.

In another dispatch to the same officer, on 27th August, he says:

Please hasten back the wagons I sent down, and inform McClellan, that I may know that I am doing right.

Again, at 2 p. m. of the 28th, he dispatches:

All that talk about bagging Jackson, &c., was bosh. That enormous gap—Manassas—was left open, and the enemy jumped through, and the story of McDowell having cut off Longstreet had no good foundation. The enemy destroyed an immense amount of property at Manassas—cars and supplies. I expect the next thing will be a raid on our rear by Longstreet, *who was cut off*.

Another dispatch to same, dated Bristoe, August 28, 1862, 9.30 a. m., and introduced by the accused, concludes as follows:

I hope for the best. My lucky star is always up about my birthday, the 31st, and I hope Mac's is up also. You will hear of us soon by way of Alexandria.

To same officer, from Bristoe, 6 a. m., 29th, he telegraphs:

Heintzelman and Reno are at Centreville, where they marched yesterday. Pope went to Centreville with the last two as a body guard, at the time not knowing where was the enemy, and when Sigel was fighting within 8 miles of him and in sight. Comment is unnecessary. I hope Mac's at work, and we will soon get ordered out of this. It would seem, from proper statements of the enemy, that he was wandering around loose, but I expect they know what they are doing, which is more than any one here or anywhere knows.

The precise import of these remarkable words, in their connection, cannot be mistaken, nor can it fail to be observed how harshly they jar upon the proprieties of military life. It may be safely affirmed that they express, on the part of the accused, an intense scorn and contempt

for the strategy and movements of the Army of Virginia, a weariness and disgust for his association with it, added to a bitter fling at his commanding general, as found in the extraordinary declaration that he had taken two divisions of his army as a "body guard" to Centreville. The words, as quoted, disclose also a looking by the accused, not to General Pope, but to General McClellan as his guide, and a reliance upon his exertions and influence to relieve him from his connection with the Army of Virginia, and an expectation, if not a hope, that they would all soon arrive at Alexandria. This, it is true, would involve the discomfiture of that army, but it would also involve the discredit of its commander, and would restore the accused to his former position under General McClellan. Such must have been the anticipation, and such certainly was the result.

In explanation of these dispatches, and with a view to relieve the mind of the impression they tend to make, it was alleged in the defense, and was proved by General Burnside, that they were official in their character, and that the accused had been requested to furnish him information in reference to current military events occurring in connection with the army with which he was serving. So far as the purpose for which they were offered by the Government is concerned, it is wholly immaterial under whose prompting, or for what end, they were written. If the words make it manifest that the accused entertained feelings of contempt and hostility toward the Army of Virginia and its commander, it matters not whether they were spoken in a private and confidential or in an official communication. The fact, however, that such words are found in a grave and formal official correspondence must serve to show how strong these feelings were, and how difficult it was to repress their utterance.

In reply to what must be regarded as the prevailing sentiment of the language quoted, there was read in the defense a dispatch from the accused to General McClellan—which was not sent—dated September 2, 1862. It is full of fervent patriotism and of professions of devotion to his duty in connection with the Army of Virginia and its commander. The court undoubtedly gave to this paper the consideration it deserved. Unhappily it came too late. The Army of Virginia had suffered, in the way of disaster, all that the enemy and the inaction of the accused could inflict upon it; and at the very moment this dispatch was written, the field for the "cordial co-operation and constant support" which it promised was being swept away by the order issued that morning for the Army of Virginia to fall back within the intrenchments of Washington, and, of course, under the command of General McClellan.

The testimony furnishes yet other indications of the *animus* of the accused. General Pope was warned by General Roberts and Lieutenant-Colonel Smith, and by others, that the accused "would fail him." In his frank and unsuspecting nature, he seems to have flung the imputation from him. He had not, then, the light which the pages of the record before you now furnish. When, afterward, on his arrival at Washington, he was informed of the dispatches sent by the accused to General Burnside, his mind appears to have been very differently impressed.

In the afternoon of the 28th of August, General Roberts became satisfied that the accused was not doing his duty in good faith to General Pope. He arrived at this conclusion, as well from his alleged disobedience of the order to march at 1 a. m. of that morning as from the declaration of General Kearny. General Roberts had previously held the accused in high estimation, and when mentioning this to General Kearny,

the latter said that "he (General Roberts) did not know him, and that he would fail General Pope."

Lieut. Col. Thomas C. H. Smith, an aide-de-camp on the staff of General Pope, called on the accused in the afternoon of the 28th of August. He had not heard of his disobedience of any orders, and had, like General Roberts, the most favorable opinion of his character and conduct as an officer; yet, such was the impression made upon him by his manner and conversation, that, at the close of their interview, he left him, fully satisfied that he would fail General Pope, and would withhold from him his support in the then pending operations of the Army of Virginia. Soon thereafter he arrived at the headquarters of General Pope, and said to him that he had just seen General Porter on his way there, and that he would fail him, and added:

So certain am I that Fitz John Porter is a traitor, that I would shoot him to-night, so far as any crime before God is concerned, if the law would allow me to do it.

The impression thus expressed he still retains, and reiterated in his testimony. This evidence is of a most striking character, and should be closely examined with a view to the ascertainment of the weight to which the opinion of the witness is entitled. It has been stigmatized in the defense of the accused as "ravings" and as "wild fantasies," which "encumber the record" as "rubbish." Such epithets were not warranted either by the language or manner of the witness. While expressing himself thus forcibly, it was evident that he was a man of fine intelligence, and equally evident that his conscientiousness rendered him careful and guarded in his statements. Certainly the particular impression referred to was deposed to with a depth and solemnity of conviction rarely paralleled in judicial proceedings. Under the pressure of the severe cross-examination to which he was subjected, he endeavored to lay bare the foundations on which his belief of the accused's meditated treachery rested. The task, however, was a difficult one, and he may not have been entirely successful. In reference to a large quantity of ammunition ordered by and forwarded to the accused, but which had not been received, he manifested utter indifference, stating that "it was going where it belonged; that it was on the road to Alexandria, where we are all going"—a favorite thought, as appears from his dispatches. His manner was sneering throughout, whenever allusion was made to matters connected with General Pope; and—

His look was that of a man having a crime on his mind.

It was physically impossible for the witness to reproduce the manner, the tone of voice, and the expression of the eye, and the play of the features, which may have so much influenced his judgment; yet these often afford a language more to be relied on than that of the lips. He could not hold up before the court, for its inspection and appreciation, the sneer of which he spoke; and yet we know that a sneer is as palpable to the mental as a smile is to the natural vision. It is a life-long experience that souls read each other, and that there are intercommunings of spirits, through instrumentalities which, while defying all human analysis, nevertheless completely command the homage of human faith. Great crimes, too, like great virtues, often reveal themselves to close observers of character and conduct as unmistakably as a flower garden announces its presence by the odors it breathes upon the air. The witness may have misconceived this "look," but from the calamities likely to follow such an act of treachery, if, indeed, it was then contemplated, it must be admitted as altogether probable that the shadow of such a crime struggling into being would have made itself manifest. In view

of the fearful perils which then menaced the Army of Virginia, to which they owed a common duty, is it not passing strange that during this interview the accused uttered not to the witness one word of kindness or cordiality, of encouragement or determination in reference to the sanguinary conflict in which the morrow was to involve them with a common enemy?

With this exhibition of the disposition of the accused toward the service in which he was engaged, I will proceed to review, as briefly as possible, the testimony in its bearing upon the charges and specifications of the record.

The order of General Pope, set forth in the first specification of the first charge, directed the accused, then at Warrenton Junction, to start at 1 o'clock on the morning of the 28th of August, and to march with his whole corps so as to be at Bristoe Station, distant 9 miles, at daylight. It recited that General Hooker had

had a very severe action with the enemy, with a loss of about 300 killed and wounded;

that the enemy were retiring along the railroad, and that it was necessary to drive them from Manassas and clear the country between that place and Gainesville. The urgency of the necessity under which the order was issued was further expressed in these words:

It is necessary, *on all accounts*, that you should be here [Bristoe Station] by daylight. I send an officer with this dispatch, who will conduct you to this place.

The order was delivered by the officer referred to (Capt. Drake DeKay), at between half-past 9 and 10 o'clock of the evening of the 27th. On delivering it, he stated to the accused:

The last thing General Pope said to me, on leaving Bristoe Station, was, that I should remain with General Porter and guide the column to Bristoe Station, leaving at 1 o'clock, and that General Pope expected him certainly to be there by daylight.

General Hooker's command was out of ammunition, and an attack from the combined forces of Jackson and Ewell was expected early on the morning of the 28th, and hence the urgency with which this prompt and vigorous movement was pressed upon the accused. The order was not obeyed.

The march, according to several of the witnesses, did not begin until daylight. Captain DeKay, who acted as guide, and moved at the head of the column, states that he was waked up just at dawn, and that he breakfasted before the march began. Captain Monteith, called by the accused, when asked if, in point of fact, the march commenced before daylight, replied:

I think it was about dawn of day.

General Sykes, also a witness of the accused, deposed that his division led on that morning; that he generally allowed from one and a half to two hours between reveille and the advance; that on the morning of the 28th, the reveille was beaten from ¼ to ½ past 2 o'clock, and that the advance was sounded as soon as they could distinguish the road, thereby evidently referring to the dawn of day. General Pope, having been asked whether, on the receipt of certain messages from the accused, the latter was on his march in obedience to the order of the 27th of August, answered:

I do not know that he was. On the contrary, from a note I had received from him, I did not understand that he would march until daylight in the morning.

While the weight of the testimony is to the effect that the troops did not move forward until daylight, none of the witnesses represent them as

having done so earlier than 3 o'clock, and the arrival at Bristoe Station took place, not at daylight, as directed by the order, but at twenty minutes past 10 of the forenoon of the 28th. If our army—a large part of it without ammunition—had not, in the meanwhile, been fallen upon and beaten, it was not because of any exertions made by the accused to prevent such a catastrophe, but simply because the enemy had not thought proper to make the anticipated attack.

The violation of this peremptory order is sought to be excused, or rather fully justified, by the accused on three grounds: First, the fatigue of his troops; second, the darkness of the night; third, the obstructions on the road growing out of breaks and difficult places in it, and the presence of wagon trains in motion.

A part of the troops had marched on the 27th from 17 to 19 miles; the remainder not so far. The command of General Sykes had marched but from 12 to 14 miles. A portion of them did not arrive at their encampment at Warrenton Junction until about sundown—half-past 6 o'clock; the others arrived earlier; some of them as early as 10 o'clock in the morning. The generals who advised and participated in the determination not to move at 1 o'clock, deposed that their troops were very much exhausted. Had the order been obeyed, the troops reaching their encampment earliest would have had fifteen hours, while those arriving latest would have had six hours and a half for rest. Would not this have been sufficient to prepare them for a march of only 9 miles? Had they reached Bristoe Station at daylight, the march for none of them would have exceeded 28 miles in twenty-four hours, while for a large part of the command it would have been less. Does not the military history of the world show that in great emergencies such forced marches often occur, and that soldiers are fully capable of enduring them?

The early part of the night was starlit, and not unusually dark. At about 11 o'clock the sky became overcast, and the night grew very, or, as some of the witnesses express it, "extremely dark," and so continued until morning. It was a darkness, however, not complicated with cold, or rain, or storm. It is a noticeable fact, also, that the determination not to move at 1 o'clock, in obedience to the order, was not occasioned by this extreme darkness, but had been taken before Captain DeKay lay down, which was at 11 o'clock.

The first answer to the position taken in the defense, that in consequence of this darkness it was impossible to obey the order, is found in the testimony of Captain Duryea, who deposes that on the night of the 27th of August he marched with his command from Warrenton, and did not halt until about midnight, and that he did not experience any unusual difficulties growing out of the night.

Maj. S. F. Barstow was also on the march that night until 9 o'clock, and was up the following morning before daylight, and says:

> I have no vivid recollection of that night beyond other nights. It seemed to me to be very much like other nights on which we moved.

He adds that no difficulty was experienced in marching the troops up to the hour at which they encamped.

Lieutenant-Colonel Myers, who, as chief quartermaster to General McDowell, had charge of the trains passing over this road on the night of the 27th, states that he was up nearly all that night. He was asked the following question:

> Question. In view of the condition of the road, as you have described it, and also the character of the night, was or was not the movement of troops along that road practicable that night?

He replied:

I do not know of anything to hinder troops marching along the railroad there. There was a road running each side of the railroad. I should think it would have been easy for troops to move along there, although I may be mistaken in that.

General Reynolds, called by the accused, and who entertained a very strong estimate of the embarrassments in the way of the march of troops on the night of the 27th over the road to Bristoe Station, admitted, on cross-examination, that dark as was the night, troops could have marched, provided they had had a road and a guide to conduct them—both of which the command of General Porter had. General Heintzelman testifies that it was not impossible for troops to have marched over that road on the night of the 27th, but that there would have been a great many stragglers, of which, he said, there are more or less on all night marches. He describes the road as narrow, but "in tolerable good condition."

General Pope was asked this question:

Question. If there were any obstacles in the way of such a march as your order contemplated, either growing out of the night or the character of the road, will you please state them?

He answered:

There was no difficulty in marching, so far as the night was concerned. I have several times made marches with a larger force than General Porter had, during the night. There was some obstruction on the road, in a wagon train that was stretched along the road, marching toward the Manassas Junction, in rear of Hooker's division, not sufficient, in my judgment, to have delayed for any considerable length of time the passage of artillery. But even had the roads been entirely blocked up, the railroad track was clear, and along that track had passed the larger portion of General Hooker's infantry. There was no obstruction to the advance of infantry.

There were a very few breaks in the road, but its general condition is shown to have been good. General Pope made the following statement on this point:

Along the road between Warrenton Junction to Kettle Run, which is perhaps 3 miles west from Bristoe Station, the track had been torn up in places; but during the day of the 27th of August, I directed Captain Merrill, of the Engineers, with a considerable force, to repair the track up to the bridge over Kettle Run, which had been burned. He reported to me on the night of the 27th that he had done so; so that from Warrenton Junction to the bridge over Kettle Run there was no obstruction on the railroad of any description. The bridge to Kettle Run had been burned, but a hundred yards above the bridge the road crossed the creek by a ford; and from there toward Bristoe Station, the most of the country, in fact, nearly the whole of it, was open country; that is, as I remember the country, riding along on the afternoon of the 27th of August.

General Roberts, who passed from Warrenton Junction to Bristoe Station on the 27th, says: "The condition of the road was good generally;" and in another part of his testimony General Pope used this language:

The road was in good condition everywhere. At most places it was a double road on each side of the railroad track. I am not sure it was a double road all the way; a part of the way I know it was.

Captain DeKay states that "the road was good;" and Lieutenant Brooks, who was well acquainted with it, that it was "very good." Lieutenant-Colonel Myers was asked:

Question. What was the condition of the road between Warrenton Junction and Bristoe Station at that time (27th), so far as regards the passage of wagons, artillery, &c.?

Answer. It was in excellent condition at that time.

The chief obstructions upon the road, however, and those most elaborately presented by the evidence and argument of the accused, were wagon trains. Captain DeKay thinks that, had the march begun at 1 o'clock, the greater part of these wagons would probably have been in camp, and would thus have been avoided. A part of them are shown to have been on the road throughout the night, and between 2 and 3 o'clock Colonel Clary found them so jammed as to constitute a serious obstruction for some 3 miles. But even here the railway track was alongside of the road, and could easily have been used by the infantry. For the first 3 miles from Warrenton Junction, it was in proof that the road was wholly unobstructed.

Captain Fifield, a witness of the accused, deposed that with 100 men he could have prevented the jam of the wagons, and that with 150 he could have kept the road entirely clear. Why did not the accused detail this force, and at once remove the obstacles which are now relied on to excuse him for this alleged disobedience of orders? The testimony leaves no doubt but that he could have done so, and that every wagon might thus have been taken out of the way of his troops by 1 o'clock. The subject does not appear to have been discussed, or even thought of. It is true that at 12 o'clock on the night of 27th, Lieutenant Brinton came from Catlett's Station to Warrenton Junction, and on having an interview with the accused, he spoke to him of the wagons on the road; whereupon accused directed him on his return to have the road cleared. On his arrival at Catlett's Station, he told the adjutant "to send out some men to get these wagons out of the way." He does not know that the direction he gave was complied with. This was at 1 o'clock, the hour at which the troops should have been in motion. All the circumstances surrounding this direction on the part of the accused leave the impression that he could not have anticipated from it the removal of the obstacles in his way. It was accidental, and was without vigor or precision, and given at an hour that showed the subject had not been with him one of any solicitude. It is observable, also, that even this feeble and inefficient provision looked to clearing the road, not for a march at 1 o'clock (for all thought of that had been abandoned), but at daylight, or, at earliest, at 3 o'clock.

On the consultation which took place between the accused and his generals, when the order was received, the opinion was expressed by the latter (and it has been repeated in their testimony) that nothing would be gained in the way of time by starting at 1 o'clock instead of a later hour—say 3 or 4. As starting at 3 would require a night march of one hour, and starting at 1 a night march of three hours, this opinion imports a declaration that the troops could march no farther in three than they could in one hour, the darkness for the whole period of time being the same. If the opinion referred to a starting at daylight, then it carries with it the assumption that during the three hours, from 1 to 4 o'clock, the troops would have been unable to make any progress whatever, and this, notwithstanding the first 3 miles of the road from their encampment is shown to have been entirely unobstructed. Surely these opinions have not been well considered.

There are certain other facts disclosed in the testimony which go far to indicate a settled purpose on the part of the accused to disregard this order of his commanding general. It was couched in terms as strong as a military man could employ in addressing a subordinate; and yet its urgent language was not commented upon, and does not seem to have attracted any attention, as appears from the conversation that ensued between the accused and his generals after its receipt. The accused, as

we learn from Captain DeKay, handed it to one of his generals present, saying—

> There is something for you to sleep on—

not something that you are to prepare to execute—not something which announces that the army with which we are connected is threatened by great perils, which we must make extraordinary efforts to meet, but "something for you to sleep on." The whole tone of that conversation was to the last degree saddening and discouraging for those who believe that in the prosecution of this war much vigor is much wisdom.

Again, General Griffin, called by the accused, testified that, after having marched about a mile with his brigade, he came to a halt, and remained there until two hours after daylight, and the remainder of the forces, no doubt, did the same. This explains why the arrival at Bristoe Station was not until twenty minutes past 10. No reason that deserves a moment's consideration is given for this long delay. It is true that General Griffin says:

> I know the artillery which followed the brigade—that is, a carriage or two of the artillery which followed the brigade—got stuck in the mud, or in a little creek, and had trouble in getting out.

When more closely questioned as to the cause of the halt, he said:

> I halted because I found, when I got to the point where I did halt, that I had only a portion of my brigade with me. In the darkness, by some accident or other, we had become separated, and I halted to get my brigade together. And the artillery, I presume, is what detained us there until we started again. That is my impression. I do not know that positively. General Morell was in command of the division.

This may explain the halt, but not the delay until the late hour mentioned. It was in summer and a season of drought, as appears from the clouds of dust which are continually brought to our notice by the testimony; and we cannot be misled as to the amount of obstacle the mud in such a stream, at such a season, would offer to the onward march of soldiers determined to do their duty.

Again. When the forces were in motion, there was no haste or vigor displayed. Captain DeKay says:

> The march was at the rate at which troops would move if there was no necessity for a rapid movement.

And he adds:

> They could have moved faster than they did.

General Pope deposed:

> I sent back several officers to try and see General Porter, and request him to hurry up and report to me where his troops were, as I was very apprehensive that after day had dawned we should have an attack upon us from the enemy. I think they all returned. The report made to me was, that General Porter was coming along very slowly, and was pushing the wagons out of the road.

Whatever may be thought of the difficulties in the way of the night march required by this order, it was the manifest duty of the accused to make a sincere and determined endeavor to overcome them. If, after having promptly and vigorously made this effort, and started as ordered, he had failed to arrive at Bristoe Station at daylight, either from the exhaustion of his troops, the darkness of the night, or the character of the road, the responsibility of the failure would not have been charged upon him. The contemptuous and unfriendly feelings disclosed in the dispatch to General Burnside—which was written but about five hours and a half before this order was received—will probably furnish a more satisfactory solution of the question why this effort was not made than can be found in the nature of the obstacles themselves.

Nor is it believed that the conduct of the accused finds any shelter in

the Napoleonic maxim quoted in the argument for the defense. The discretion it allows to a subordinate, separated from his superior officer, is understood to relate to the means, and not the end, of an order. When the accused determined that, instead of starting at 1 o'clock, he would start at 3 or 4, he did not resolve that he would arrive at Bristoe Station by daylight in a different manner from that indicated by his commanding general, but that he would not arrive there by daylight at all. In regard to this—the end of the order—he had no discretion.

The order set forth in the second specification to first charge was addressed to Generals McDowell and Porter, jointly, and a copy, or, rather, duplicate, of it was delivered to each of them, it may be inferred from all the evidence on the point, at about 10 o'clock in the morning of the 29th of August. Previously to this they had met with their forces, and, under the Sixty-second Article of War, General McDowell had assumed the command. The order directed them to move with their joint command toward Gainesville until they should effect a communication with the forces of Heintzelman, Sigel, and Reno, and then to halt, taking care to occupy such a position that they could reach Bull Run that night or by the morning of the following day. The order contained these further words:

> If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out.

At the time this order reached Generals McDowell and Porter, they were on the road between Manassas Junction and Bethlehem church, and were proceeding in the direction of Gainesville, as the order contemplated. The order being issued to them jointly, showed that it was the purpose of General Pope that they should act independently of each other, and each in direct subordination to himself; and he testified that such was his intention. Under these circumstances, it may be well questioned whether, under the Sixty-second Article of War, General McDowell could continue the command which he had assumed over their joint forces. That article excludes the idea of the presence of an officer superior in rank to those commanding the different corps of which it speaks. In this case, General Pope was absent but a few miles—was, in fact, occupying the same field of military operations with Generals McDowell and Porter, and claimed to decide the question (which it certainly belonged to him to determine) that these generals were so far in his presence that he might command them directly, and not through each other.

Their forces continued their march—those of the accused being in the advance—until the front of his column had reached some 3 miles beyond Bethlehem church, and until a small part of General McDowell's command had passed that point. General McDowell then rode forward to the head of the column of the accused, where an interview and conference took place between them, to which reference is frequently made in the testimony. They discussed the joint order, and General McDowell determined, for himself, that there were—

> considerable advantages to be gained by departing from it,

and by moving with his forces along the Sudley Springs road toward the field of a battle then being fought by the main army of General Pope, at the distance of 3 or 4 miles. His purpose was to throw himself on the enemy's center, and he wished the accused to attack his right flank. He therefore said to him:

> You put your force in here, and I will take mine up the Sudley Springs road, on the left of the troops engaged at that point with the enemy.

And he left him, at about 12 o'clock, with the belief and understanding that he would put in his force at that point. Why this expectation was doomed to disappointment may possibly be gathered from the following extract from General McDowell's testimony as to what occurred during his conversation with the accused:

Question. You have said that the accused made an observation to you which showed that he was satisfied that the enemy was in his immediate front; will you state what that observation was?

Answer. I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply. The observation was to this effect [putting his hand in the direction of the dust rising above the tops of the trees], "We cannot go in there anywhere without getting into a fight."

Question. What reply did you make to that remark?

Answer. I think to this effect: "That is what we came here for."

These words will certainly stand in memorable contrast with the sad utterance to which they were a reply.

General McDowell, on parting with the accused, ceased to exercise any authority over his command, and he was thus left untrammeled, and in possession of the joint order, still in full force. Soon after General Griffin's brigade—a part of the corps of the accused—was ordered to move to the right, as if for the purpose of advancing on the enemy, as directed by General McDowell. It had proceeded, however, only about 600 yards, when, coming into "some small pine bushes," and somebody saying there were obstacles ahead, a retreat was ordered, and they fell back to their original position. General Griffin saw no obstacles himself, and he made no reconnaissance. This was all that was done toward carrying into effect the stirring and soldierly direction of General McDowell.

Some time after this faint demonstration—it may have been an hour or more, General McDowell having left at about 12—a rebel battery threw three or four shot at the head of the accused's column. It was at once replied to and silenced, and then came the order to fall back, of which Col. B. F. Smith, who witnessed the artillery firing, speaks so distinctly. The note of the accused to Generals McDowell and King, which was read in evidence and is without date, must have been written immediately after this artillery firing, and after the order to retreat which followed it. It is in the following words:

Generals McDOWELL and KING:

I found it impossible to communicate by crossing the roads to Groveton. The enemy are in strong force on this road, and, as they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column, to see what is passing and how affairs are going. Had you not better send your train back? I will communicate with you.

F. J. PORTER,
Major-General.

This note appears to have been written for the purpose of explaining why the accused had not "put his force in" at the place which General McDowell had pointed out. It announces most energetically a determination "to withdraw"—*i. e.*, retreat—to Manassas, because of the approach of the enemy, and because the battle seemed to be going against the Federal forces. That this purpose was promptly carried out, substantially, if not to the letter, is made evident from the fact

that, at between 5 and 6 o'clock, the accused was found at or near Bethlehem church, surrounded by his troops, whose arms were stacked. It is further proved by Col. B. F. Smith, who was in the front at the time of the artillery firing, and alleges that he and the troops of his command then fell back, under orders, to within a mile or two of Manassas, where they passed the night, having arrived there in the afternoon. It is yet further shown by General Griffin, examined by the accused, who says his brigade retreated from a mile and a half to two miles. This retrograde movement might have been excused had it been made in good faith for the purpose of reaching Bull Run that night; but no such purpose was entertained, nor has it been insisted that it was, either by the testimony or the argument. General McDowell says the accused might have attacked the enemy and would have still had ample time for falling back on Bull Run. Indeed, as appears from the map, such an attack would have been an advance in the direction of Bull Run. He might have found justification, too, for this step, had it been taken from a conviction that, in the sense of the order, "considerable advantages" were to be gained by departing from its terms. No such position, however, could be successfully taken in the defense. The only "advantages" which the retreat promised were the personal safety of the accused and staff, and the exemption of his troops from any participation in the sanguinary battle then being fought immediately to his right. Surely such advantages as these, purchased, as they were, at the imminent hazard of the sacrifice of the whole army, were not those contemplated by the order. The advance of the accused, either along the Gainesville road or to the right, would have brought him into conflict with the enemy. The court concluded, and justly, that his falling back, under the circumstances and for the purpose mentioned in his note to Generals McDowell and King, was a violation of the joint order to himself and General McDowell.

It would seem, also, to have been a manifest violation of the duty resting on him as a soldier, in the position in which he was placed, without reference to any specific order or direction leading or directing him to engage the enemy. In forward, aggressive movements, it is an established principle of military science that the column shall be so held in their advance as to be ready to afford mutual assistance in time of need. Another elementary principle of such movements is, that in the absence of positive, restraining orders, the march shall always be toward the sound of the guns, thus confirming the sentiment of the words of General McDowell, that it is the soldier's mission to fight. Both these fundamental rules of the military profession were disregarded in the retreat of the accused. He fell back precisely at the moment that the obligation to co-operate which was pressing upon him required him to advance, and his march was not toward, but from, the sound of the enemy's cannon.

The order of 4.30 p. m., August 29, directed the accused "to push forward into action at once on the enemy's right flank, and, if possible, on his rear." It was not obeyed, nor was any attempt made to obey it.

It was claimed in the defense that the accused should not be condemned for this disobedience; first, because the order was received too late to be obeyed, and, secondly, because obedience to it was impracticable in consequence of the presence of the enemy in overwhelming force, and in consequence of the character of the country over which the movement would have had to be made.

There is a decided conflict in the testimony as to the hour at which the order was received. It bears date 4.30 p. m., and Captain Pope, the

staff officer who bore it, says that he proceeded direct from General Pope to the accused, and delivered it—

as early as 5 o'clock, or probably three or four minutes after 5.

Charles Duffee, the orderly who accompanied him, testifies that they left General Pope at about half-past 4, and went on to the headquarters of the accused at a pace—

about as fast as they thought their horses could travel.

He thinks about an hour was occupied on the road, and that the order reached the accused at about half-past 5. These statements are corroborated by the evidence of General McDowell as to the time and place at which he met them and read the order. General Pope says:

I know that an aide-de-camp, riding rapidly, could go from the field of battle to Manassas Junction, or to any point west of Manassas Junction, on the Gainesville road, if he found General Porter in advance of Manassas Junction, within an hour, by going at speed.

General Roberts, who was present when the order was issued, expressed the opinion that it should have been delivered—

in half an hour, or less, as orders are generally carried on such occasions.

Adopting the latest estimate—that of General Pope and the orderly—this would give the accused two hours of daylight within which to make the attack.

On the other hand, there are five witnesses introduced by the accused, three of them being his staff officers, viz: General Sykes, Lieutenant-Colonel Locke, Captain Monteith, Lieutenant Weld, and Lieutenant Ingham, who depose that the order was not received until about sundown. One of them, indeed, though he is not supported by the others, fixes the hour much later. If, in ascertaining the value of testimony, witnesses were counted, and not weighed, the question would be at once settled by the relative numbers as given. Such, however, is not the rule of law, and it may be that, after carefully considering all the circumstances, the court felt that the explicit and intelligent statements of Captain Pope and his orderly, fortified by the corroborative evidence of Generals Pope, McDowell, and Roberts, were not overcome by the opinions of the five officers named. There was, outside of the positive testimony, a consideration strongly supporting this view, and it is this: There is no question as to the time at which Captain Pope left with the order; it was at 4½ o'clock; he rode as fast as his horse could carry him, and had but about 5 miles to travel; and yet, according to the theory of the defense—that he did not arrive until sunset, or half-past six—he was two hours on the way. Is it credible that a staff officer, bearing an important order, in the midst of a fiercely contested battle, would have traveled at this rate, and this, too, when he was conducted by an orderly acquainted with the road, and encountered no obstacle to his progress? Is it not much more probable that but a single hour was occupied, and that, in point of fact, he arrived at half-past 5?

Conceding, however, for the sake of the argument, the position taken by the defense, that the order was not received until sunset, this would have left the accused an hour of daylight within which to make the movement. The enemy had been so far encouraged in their advance by the inaction of the forces of the accused, and by their falling back, that at this late moment the front of his column was not separated from the advance of the rebels by more than a mile or a mile and a half. But little time, therefore, was required to make the attack. It

is admitted that it was not made, but was there any earnest or vigorous effort on the part of the accused to obey the order? Colonel Locke states that, soon after the receipt of the order from General Pope, he bore one from the accused to General Morell, directing him to engage the enemy, which, as appears from the statement of Colonel Marshall, was to be done with but four regiments; but General Morell testified that before there was time to carry this order into execution—say, within about half an hour after its receipt—it was countermanded by another, directing him to pass the night with his troops where he was. This was all that was done toward attacking the enemy, and yet General McDowell testified that an attack even at this late hour—indeed, at any hour before the battle closed, which was at dark—would have resulted in a victory for our arms.

There is one fact—probably the most remarkable one disclosed by the record—which must have impressed the court as going far to manifest the true spirit of the conduct of the accused on this occasion. The forces of General Morell were in the front, and those of General Sykes were immediately in their rear, and supporting them. In the progress of any determined movement against the enemy, therefore, the command of General Sykes would be necessarily involved, and the presence of that general would be required; yet General Sykes states that he was with General Porter when the order from General Pope was received and when that to General Morell was sent; that he remained with him all the evening and night; and that he never heard that an order to attack the enemy had been received from General Pope, or had been forwarded to General Morell.* What conclusion is necessarily drawn from this? If the accused had seriously determined that the order to General Morell should be executed, would he not have apprised General Sykes of its character, and directed him to proceed at once to his command? When we add to this the feebleness of the attack directed—being but with four regiments—and the further fact that the order was revoked before it was possible to make the movement, can we escape a painful impression that the order itself was issued without any expectation that it would, or any purpose that it should, be obeyed?

There is yet one other fact presented in connection with this order which deserves a passing notice. Captain Pope found the accused with his troops halted, and the arms of some of them stacked. After delivering the order, and during his stay of fifteen or twenty minutes, he did—

not observe any orders given, or any indication of preparation for a movement in the direction of the battle-field.

On his return, nearly an hour afterward, the same condition of things existed. The following extract from the testimony of Mr. Duffee, who accompanied Captain Pope, will yet further illustrate the absence of all anxiety, if not of all interest on the part of the accused:

Question. Did you see the order delivered into the hands of General Porter?
Answer. Yes, sir; I saw him take the order from Captain Pope.
Question. Was he in his tent or out of doors?
Answer. He was lying down under a shade tree when he took the order.

* The troops of General Sykes extended along the road from those of General Morell toward, and, may be, to where General Porter was. It is not, therefore, intended to intimate that, in being with General Porter at the moment, he was out of place, but to say that had it been General Porter's purpose that his order to General Morell to engage the enemy should be vigorously carried out, he would, from General Sykes' necessary relation to the movement, have advised him of it, and have directed him to go forward and prepare for performing his part in its execution.

Question. Did he change his position on reading the order, or did he continue to lie down?

Answer. I cannot state positively whether he rose to his feet or not; but at the time he was reading the order, I noticed that he was lying in this position on the ground [describing him as resting on his elbow, his head upon his hand].

Question. Did you leave him lying down on the ground when you came away?

Answer. Yes, sir.

The accused had, for between five and six hours, been listening to the sounds of the battle raging immediately to his right. Its dust and smoke were before his eyes, and the reverberation of its artillery was in his ears. He must have known the exhaustion and carnage consequent upon this prolonged conflict, and he had reason to believe, as shown by his note to Generals McDowell and King, that our army was giving way before the heavy re-enforcements of the enemy. He had a command of some 13,000 fresh and well-appointed troops, who had marched but a few miles, and had not fought at all on that day. Under these circumstances, should not an order to charge the enemy have electrified him as a soldier, and have brought him not only to his feet and to his saddle, but have awakened the sounds of eager preparation throughout his camp? But the bugle-note of this order seems to have fallen unheeded, and after reading it, and at the close of an interview of from 15 to 20 minutes, the messenger who bore it turned away leaving the accused still—

lying on the ground.

There is some contrariety in the evidence as to the force of the enemy by which the accused was opposed. The weight of the testimony is that it was small, decidedly so in the early part of the afternoon, when the attack directed by General McDowell should have been made. General Roberts thinks there was only a cavalry force, with some light artillery. Col. B. F. Smith, who was at the head of the column at the time the rebel battery was silenced, and who fell back with his command half an hour afterward, noticed clouds of dust beyond the trees, but whether there were troops advancing or moving in another direction. he could not tell. He saw nothing to induce him to believe that they were retreating before the enemy, but supposed that they had been making a reconnaissance in force, and having completed it, were falling back for some other duty. General Griffin, a witness for the accused, who was also at the front, and enjoyed every opportunity of observation, having been asked as to the position of the enemy in relation to General Porter's corps between 5 and 7 o'clock of the 29th, replied:

It is a hard question to answer. I do not know much about the enemy; I only know that during the day large clouds of dust were going to our front and to our left from a point stated to us then to be Thoroughfare Gap. The batteries which opened upon us at 1 o'clock were within 1,200 or 1,500 yards of us. We saw no force at all; we saw scattering groups of horsemen, or of infantry. I do not believe we saw in any one group over 40 men.

Major Hyland, who belonged to Colonel Marshall's regiment of skirmishers, and was some 800 or 1,000 yards in advance of General Morell, says the enemy began to form in his front and to the right between 2 and 3 o'clock. He saw none to the left. Thinks the force was very large, and although unable to give even a proximate estimate of their numbers, believes they were strong enough to have resisted an attack of General Porter's corps. Second Lieutenant Stevenson supposed the enemy's forces to consist of from 12,000 to 15,000; but he was a young man, with limited experience, and when he stated that the enemy's line of battle was but a mile long, it was sufficiently evident that a large abatement was to be made from his estimate. Colonel Marshall set the

enemy's troops down at twice the number of the corps of the accused. It is obvious, however, that he was largely influenced in forming this opinion from the clouds of dust, which may have arisen as much from the movement of ambulances and wagons as from the march of troops. He states that they came from toward Thoroughfare Gap, and separated into two columns, one of which proceeded in the direction of the battle-field at Groveton, and the other came down on the Gainesville and Manassas road. Now, we learn from General Buford that the enemy's forces passing through Gainesville that day from Thoroughfare Gap, and counted by himself, did not exceed 14,000 men, and dividing these into two columns, it is believed that at no time on the 29th could the accused have been confronted by a rebel force exceeding 7,000, a little more than half the strength of his own corps. The strong probability is, that the force was not so large; but supposing the enemy to have had quite as large a force as his own, was that a reason why he should not make the attack, seeing that a severely contested battle was then pending?

The course of the inquiry on the part of the defense would seem to imply an impression that the accused could not attack the right flank because he found an enemy in his front, and could not attack the front because the order was to engage the right. A dead-lock, however, in military movements could scarcely be suffered to be produced by such a process as this. General McDowell solves this question by saying that if the enemy's forces were posted in the front of the accused in the manner indicated by the witnesses, they must have constituted his right flank, so that a movement in that direction would have been a literal compliance with the order.

A conclusive reply to the suggestion that the ground between the enemy and the accused was impracticable for military movements, is found in the testimony of Lieutenant-Colonel Smith. He says:

> I infer that the corps of the accused could have moved up, its right wing joining with the forces engaged, and have flanked the enemy. This is not all an inference merely from the general character of the country. It is based, also, on the fact that that portion of the country over which, as I understand it, the corps of the accused would have moved upon the enemy, *was sufficiently practicable to enable the enemy, as they did, to make a similar movement on our left on the next day.*

Some of the witnesses of the accused declare that artillery could not have passed over this ground, while others testified that infantry could not have been marched through the woods in any order. Under a cross-examination, however, the obstacles on which these opinions were based were much reduced in the attempt to enumerate them. The general description of the country given is that it is open, with fields and woods and occasional ravines, but not remarkable for its ruggedness. There were no impassable streams, or morasses, or precipices. General McDowell deposed that he did not consider that there were any insuperable obstacles—

> in the way of the advance on the part of General Porter's command upon the flank of the enemy.

And he proved the sincerity of this opinion by directing him to make the movement. After reciting in detail certain facts leading to this belief, he thus concludes:

> These movements by these two divisions of my corps, my own movements, and the movements of the enemy, give me the belief that troops could move through the country comprised between the Warrenton turnpike and the Sudley Springs road and the road from Bethlehem church to Gainesville. I will mention, further, that that country is a mixture of woods, cleared ground, and hills, and that it is easy for troops to march without being seen or seeing the enemy.

A glance at the map which accompanies the record will show that the ground in question is embraced by this boundary and description.

It may be admitted—and perhaps the testimony requires the admission to be made—that in falling upon the enemy on the afternoon of the 29th, the accused would have encountered both difficulty and danger; but difficulty and danger, in time of war, are daily and hourly in the category of the soldier's life. Their presence should be for him not a discouragement, but an inspiration. To grapple with them should be his ambition; to overcome them, his glory.

That a vigorous attack upon the enemy by the accused, at any time between 12 o'clock, when the battle began, and dark, when it closed, would have secured a triumph for our arms, and not only the overthrow of the rebel forces, but probably the destruction or capture of Jackson's army, the record fully justifies us in maintaining. This opinion, in effect, is emphatically expressed by Generals Pope, McDowell, and Roberts, and by Lieutenant-Colonel Smith, all of whom participated in the engagement, and were well qualified to judge. General Roberts, who was on the field throughout the day, says:

> I do not doubt at all that it would have resulted in the defeat, if not in the capture, of the main army of the Confederates that were in the field at that time.

To the same effect is the following explicit language of General Pope:

> Late in the afternoon of the 29th—perhaps toward half-past 5 or 6 o'clock—about the time that I hoped General Porter would be in his position and assaulting the enemy on the flank, and when General McDowell had himself arrived with his corps on the field of battle, I directed an attack to be made on the left of the enemy's line, which was handsomely done by Heintzelman's and Reno's corps. The enemy was driven back in all directions, and left a large part of the ground, with his dead and wounded upon it, in our possession. Had General Porter fallen upon the flank of the enemy, as it was hoped, at any time up to 8 o'clock that night, it is my firm conviction that we should have destroyed the army of Jackson.

Even had the attack itself failed, General McDowell states that the number of troops which would have been withdrawn from the main battle by the enemy to effect this result would have so far relieved our center as to render our victory complete. When we recall the calamities already suffered by our country, and contemplate the untold griefs to the homes and hearts of its people which may yet follow from the escape of that army on that day, we can appreciate with some approach to accuracy the responsibilities incurred by a line of conduct which so certainly and so fatally led to that disaster.

The first, second, and third specifications of the second charge arraign the conduct of the accused on the 29th, under the Fifty-second Article of War, as "misbehavior before the enemy." If a soldier disobeys the order of his superior officer before the enemy, he commits a double crime, by violating both the Ninth and Fifty-second Articles of War, and he may be prosecuted and convicted of either or both offenses. So any other breach of duty, connected with military movements and occurring in the presence of the enemy, has assigned to it by the Articles of War a depth of criminality which would not belong to it under other and ordinary circumstances. This results from the increased disaster likely to follow from misconduct in such a conjuncture, and from the fact that insensibility to duty is doubly criminal when displayed in the midst of those dangers which ever inspire the true soldier with renewed devotion to the honor and interests of his flag. The accused is shown to have been, with his command, in the presence of the enemy from the beginning to the end of the battle of the 29th—a period of at

least seven and a half or eight hours. His troops were fresh and well equipped; and that from his position he was bound to have taken part in the engagement, and that his failure to do so was to the last degree culpable, cannot be denied, unless it can be made to appear that he was restrained by some uncontrollable physical necessity or by some positive order of his commanding general. The attempt has been made to justify his conduct on both grounds. The examination already made of the testimony warrants the conviction that the material obstacles in his way, growing out of the proximity and strength of the enemy and the nature of the country, were not sufficient to excuse his inaction. His chief of staff, however, Lieutenant-Colonel Locke, called by the defense, deposed that in the afternoon of the 29th he bore a message from the accused to General King, whom he found near Bethlehem church with General McDowell; that General McDowell sent back by him to the accused a reply in the following words:

> Give my compliments to General Porter, and say to him that I am going to the right, and will take General King with me. I think he (General Porter) had better remain where he is; but, if it is necessary for him to fall back, he can do so upon my left.

And the witness testified that he regarded this as an order, and communicated it to the accused, and this, it is insisted, restrained him from attacking the enemy.

In the first place, it is to be remarked that this language does not import an order, but simply a suggestion and counsel from one companion in arms to another. Again, General McDowell was not then in a condition to command the accused, and this both he and the accused must have well known. They were separated from each other, and were not, in the terms of the Sixty-second Article of War, "joined or doing duty together." General McDowell was proceeding at the moment, with his forces, upon an entirely distinct service from that in which the accused was engaged. But the whole of Lieutenant-Colonel Locke's statement in regard to this message was swept away by the evidence of Generals McDowell and King. The witness had stated that the message was given to him in the presence of General King, and was heard by him. General King, however, testified that he was not with General McDowell at all after the *morning* of the 29th, and that he heard no such message; while General McDowell declared that none such was sent by him. It is further urged in the defense that, although the evidence may thus fail to show that such a message was sent, yet that it was delivered to the accused and he was justified in obeying it. This position is assumed in disregard of the maxim "*falsus in uno, falsus in omnibus.*" The same witness who deposed to the receipt of the message from General McDowell deposed to its delivery to the accused, and in neither point was he supported by the testimony of others. Having been discredited as laboring under a complete misapprehension in regard to the first, this discredit necessarily attaches to the second, and, under the maxim quoted, his entire statement falls to the ground. But even if it had been established that this message had been sent and received, and that it was in form an order, and given by proper authority, still, it is not claimed that it reached the accused before about 3 o'clock. This would leave his inaction, from 12 to 3 o'clock, in the presence of the enemy, and in the midst of a battle, unexplained, and therefore unpalliated in its culpability by anything that is contained in the record.

Although that portion of the defense which would justify the inaction of the accused, because of the enemy and of the difficult nature of the

ground in his front and to his right, has been commented on, it may not be inappropriate to add that history shows these obstacles to be insignificant as contrasted with those which have been often in great emergencies overcome by military commanders. The battle of Hohenlinden furnishes an illustration, and in one respect bears a striking analogy, while in another offering a remarkable contrast to the events of 29th August. A few extracts from Thiers' History of the Consulate and the Empire, vol. 1, pp. 217, 218, 219, Lippincott & Co.'s edition of 1861, will suffice to show the appositeness of the reference.

Moreau, with 60,000 French troops, was met by an Austrian army 70,000 strong. "Richepanse and Decaen's divisions," says the historian, "were sent by Moreau an order, somewhat vaguely expressed, but positive, to throw themselves from the right-hand to the left-hand road, to get into the latter, into the environs of Maltenboet, and there surprise the Austrian army, entangled in the forest. He neither indicated the route to be pursued nor provided against accidents which might occur. He left everything that was to be done to the intelligence of Richepanse." "At length, as the battle progressed, a wavering was observed in the Austrian troops of the center, which proved to be Richepanse falling on their rear." "*He had started without waiting for Decaen, and daringly penetrated into that tract of thickets and ravines*, which separated the two roads, *and marching while the fight was going on at Hohenlinden, and making incredible efforts to drag with him over that inundated ground six pieces of small caliber.*" "Richepanse, reckoning upon Decaen to extricate Drouet's brigade, had marched without losing a moment for Maltenboet, for his military instinct told him that was the decisive point. *Though he had left but two demi brigades of infantry (the Eighth and Forty-eighth), a single regiment of cavalry (the First Chasseurs), and six pieces of cannon, with about* 6,000 *men, he had continued his march, dragging his artillery by hand, almost always through the quagmire.*" "He then fell to the left, and took the bold resolution of falling on the Austrian rear in the defile of the forest." "Marching, sword in hand, amidst his grenadiers, he penetrated into the forest, sustained, without flinching, a violent discharge of grapeshot, then fell in with two Hungarian battalions, which hastened to bar up his passage. Richepanse would have inspirited his brave soldiers with words and gestures, but they had no need of them. 'Those fellows are our prisoners,' cried they, 'let us charge!' They charged accordingly, and completely routed the Hungarian battalions. Presently they came to masses of baggage, artillery, infantry, accumulated pell-mell at this spot. Richepanse struck inexpressible terror into this multitude, and threw it into frightful disorder. At the same moment he heard confused shouts at the other extremity of the defile. It was Ney, who, advancing from Hohenlinden, had penetrated by the head of the defile, and *pushed before him the Austrian column which Richepanse was driving the other way by attacking it in the rear.*" A complete rout of the Austrian army ensued. Its loss was some 20,000 men, with nearly all its artillery and baggage, and "what," as the historian observes, "was of still greater importance, its moral courage." "This battle," continues M. Thiers, "is the most brilliant that Moreau ever fought, and certainly one of the greatest in the present century, which has beheld such extraordinary conflicts."

What were the difficulties that appalled the accused on the 29th as compared with those surmounted by Richepanse with but 6,000 men? This example is an impressive proof of what a general can and will achieve when his heart is in his work, and when he finds himself in the

presence of the enemies of his country. General McDowell, as a soldier and a commander, deposed that it was the duty of the accused to have attacked the enemy on the 29th, and it would seem this duty was so manifest and so clearly the result of his position that no order could have added much, if anything, to its force and urgency. What General McDowell prescribed for his associate in arms he unhesitatingly accepted for himself. He had no summons to arouse him, and no guide to conduct him but the sound of the cannon, following which, he, with his command, found his way to the battle-field, where his instincts as a soldier told him both his duty and his honor required him to be. And it is, no doubt, to his timely arrival and active participation in the conflict that we are largely indebted for General Roberts' declaration that at the close of the day the advantages were decidedly on the side of the Federal troops. Had the accused, obeying the same impulse that carried General McDowell up the Sudley Springs road, made a movement upon the enemy with the vigor and heroism which the occasion demanded, it is altogether probable that the glory of Richepanse would have been his, and the fate of the Austrians that of the rebel army. After carefully considering all the impediments which have been so elaborately arrayed as in the way of the accused on the night of the 27th, and throughout the day of the 29th, we cannot but realize that they shrink away and are scarcely to be named beside those obstacles of darkness, and tempest, and snow, and morass, and Alpine precipices, and frowning batteries which the warriors of other times and lands have unhesitatingly confronted and bravely overcome.

But there is one feature of the inaction of the accused on the 29th which it is especially sorrowful to contemplate. How, unrestrained as he was, and with the cannonade of the battle in his ears, and its smoke and the dust of the gathering forces before his eyes, he could, for seven and a half or eight hours, resist the temptation to plunge into the combat, it is difficult to conceive. But this alone is not the saddest aspect in which his conduct presents itself. This aspect is distinctly set forth in the third specification of the second charge. Colonel Marshall states that from the cheerings and peculiar yells of the enemy heard on the evening of the 29th, he and every man of his command believed that General Pope's army was being driven from the field. General Morell also says that from the sound of the artillery the battle seemed to be receding, which indicated that it was going against the Federal forces. The accused, in his note to Generals McDowell and King, speaking of the enemy, says:

> As they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, I have determined to withdraw to Manassas;

and, in further justification of this step, he adds:

> They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force.

In the afternoon, then, of the 29th, it is clear that the conviction was entertained by the accused and his officers that our forces were being driven before the enemy—a conviction which, in tones above even the roar of the artillery, should have appealed to his soldier's heart to rush to the rescue. But, heedless of the summons, he turned, not toward, but away, from his struggling companions in arms, in the direction of Manassas.

Must we seek an explanation of this want of sympathy with the brave men who were doing battle that day in the feelings, as shown by his dispatches, which unhappily possessed him in reference to the Army of

Virginia and its commanding general? That army, as he seems to have been aware, was sent forth not to capture Richmond or to occupy the South, but simply to harass and baffle the march of the advancing masses of the enemy, while the Army of the Potomac was being extricated from the perils that surrounded it on the Peninsula—a service which should not have provoked a sneer from the accused. It cannot be improper to add, what the record will sustain me in saying, that so far as light is shed upon the subject by the testimony, the Army of Virginia appears to have nobly performed the arduous and perilous work committed to its hands. Its campaign was brief, but marked by signal vigor and ability, and animated by a spirit which, shrinking from neither toil nor exposure nor danger, bravely struck the enemy whenever and wherever he could be found.

The accused presents two general grounds of defense, which apply to all the accusations against him. They are, first, his general reputation for zeal and loyalty; and, secondly, the expression of satisfaction with his conduct which General Pope is alleged to have made at Fairfax Court-House on the 2d of September.

In reference to the first, the testimony is full and earnest as to his former services and character for faithfulness and efficiency as an officer. The law admits such proof in criminal prosecutions, because a presumption of innocence arises from former good conduct, as evidence by general reputation. The presumption, however, is held to be entitled to little weight except in doubtful cases. Where it comes into conflict with evidence that is both positive and reliable, it at once gives way.

In regard to the second, Colonel Ruggles testified that at the close of a conversation on the 2d September, at Fairfax Court-House, between General Pope and the accused, the general expressed himself satisfied with his conduct, referring, as the witness believed, to the transactions on which the present charges are based. Colonel Ruggles admits, however, that he was not a party to the conversation; that he heard it only in scraps, and endeavored not to hear it at all. General Pope, on the other hand, deposed that he was not satisfied, and could not have been, and that the expression heard by Colonel Ruggles related to explanations made by the accused as to certain disparaging telegrams which he was understood to have sent to General Burnside. In view of the relation of these two officers to the conversation, the court, of course, could not hesitate to accept the version of General Pope as the true one. Even if General Pope had declared himself satisfied, it would not have affected the status of the accused before the law. His responsibility was to his Government and country, and not to the commanding general. Nor can any presumption arise against this proceeding from the failure of General Pope to prefer charges against the accused. It was his privilege to prefer them, but he was not bound to do so. He discharged his whole duty when, in his official report, he laid these transactions before his Government for its consideration.

This case has been most patiently investigated. If, in war, and in the midst of active hostilities, any Government has ever devoted so long a period of time—some forty-five days—to the examination of a military charge, it has not come to my knowledge. The court was not only patient and just, but liberal, and in the end everything was received in evidence which could possibly tend to place the conduct of the accused in its true light. It is not believed that there remains upon the record a single ruling of the court to which exception could be seriously taken.

The case is important, not only because of the gravity of the charges and the dignity of the officer arraigned, but also because of the fact that it involves a principle which lies at the very foundation of all discipline and of all efficiency in military operations—the principle of military obedience. A standard author, treating on this branch of jurisprudence, says:

> Hesitancy in the execution of a military order is clearly, under most circumstances, a serious offense, and would subject one to severe penalties; but actual disobedience is a crime which the law has stigmatized as of the highest degree, and against which is denounced the extreme punishment of death. (De Hart, p. 165.)

The same author continues:

> In every case, then, in which an order is not clearly in derogation of some right or obligation created by law, the command of a superior must meet with unhesitating and instant obedience.

So vital to the military system is this subordination of will and action deemed, that it is secured by the most solemn of human sanctions. Each officer and soldier before entering the service swears that he "will observe and obey the orders of the officers appointed over him;" and it is from this, probably, that the offense of disobedience derives much of the depth and darkness of the criminality with which it is stamped by the Articles of War. Obedience, indeed, is the very jewel of the soldier's life. It adorns him more, even, than laurels, which are so often plucked by unholy hands. The soldier who has given to the order of his superior officer a prompt, an earnest, a heartfelt support, has triumphed in the field of duty, even though he may have fallen on the field of arms.

The offenses for which the pleadings and testimony arraign the accused are the very gravest that a soldier can possibly commit, being neither more nor less than the willful violation of the orders of his commanding general in the midst of momentous and perilous military movements, and the shameful abandonment of a struggling army which it was his solemn duty to support, in the very presence of the enemy, and under the very sound of his artillery. The court was careful to give to the accused the benefit of all well-founded doubts that arose in their minds, in reference either to the fact of disobedience or in reference to the measure of criminality that prompted it, and hence they found him not guilty of the fourth and fifth specifications of first charge; and, in the same spirit, the fourth specification of second charge was withdrawn. While, however, the court felt that of crimes such as these no officer should be convicted but upon the clearest and most convincing proof of his guilt, they must also have felt that the honor of the profession of arms and the most enduring interests of our common Government and country imperatively demanded that there should be no acquittal when that proof had been made.

J. HOLT,
Judge-Advocate-General.

To the PRESIDENT.

WAR DEPARTMENT,
PUBLICATION OFFICE WAR RECORDS, 1861–'65,
Washington, August 7, 1886.

The ACTING JUDGE-ADVOCATE-GENERAL U. S. ARMY:

COLONEL: In order that this office may comply with the provisions of the act approved July 31, 1886, in relation to the trial of Fitz John

Porter [Public 160, p. 27], I request that you furnish me with the original record of the Porter court-martial, the report thereon by Judge-Advocate-General Holt to President Lincoln, and any reply thereto filed with the President before approval of sentence that may be among the records of your office; also a copy of the President's instructions to Colonel Holt, of January 12, 1863.

Very respectfully, your obedient servant,

ROBERT N. SCOTT,
Lieutenant-Colonel Third Artillery, in Charge.

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WAR DEPARTMENT, JUDGE-ADVOCATE-GENERAL'S OFFICE,
Washington, D. C., August 10, 1886.

Lieut. Col. ROBERT N. SCOTT,
War Records Office:

COLONEL: In compliance with your request of the 7th instant, I have the honor to transmit herewith the original record of the trial of Brig. Gen. Fitz John Porter, U. S. Army, together with the exhibits. The original review of the proceedings by Judge-Advocate-General Holt is not on file in this office, and does not appear to have ever been recorded in its books. A printed copy of the report is attached to the record. No reply thereto filed with the President before approval of sentence is found among the records of the office. I also inclose an official copy of the letter of President Lincoln, dated January 12, 1863, directing Judge-Advocate-General Holt to review the proceedings.

Very respectfully, your obedient servant,

G. NORMAN LIEBER,
Acting Judge-Advocate-General.

[Inclosure.]

WAR DEPARTMENT,
Washington City, January 12, 1863.

The Judge-Advocate-General is instructed to revise the proceedings of the court-martial in the case of Maj. Gen. Fitz John Porter, and to report fully upon any legal questions that may have arisen in them, and upon the bearing of the testimony in reference to the charges and specifications exhibited against the accused and upon which he was tried.

ABRAHAM LINCOLN.

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